

**AGREEMENT FOR GENERAL SERVICES
BETWEEN
THE REGENTS OF THE UNIVERSITY OF MICHIGAN
AND
NOODLE PARTNERS**

This AGREEMENT FOR SERVICES is made between **THE REGENTS OF THE UNIVERSITY OF MICHIGAN (“University”), a Michigan Constitutional Corporation**, Ann Arbor, Michigan, and **NOODLE PARTNERS, INC.** (“Supplier”). University and Suppliers are each a “party” or together “parties”.

The following terms and conditions shall be observed. Any Supplier terms and conditions included with Supplier’s invoice or any other document provided by Supplier shall be of no effect.

- 1.0 **Description of Services.** Supplier hereby agrees to provide Online Program Management Services, “Services” defined in Exhibit A, and to comply with all “Specifications”, which may be included in the Services description at Exhibit A, and all terms under this Agreement. The University shall use reasonable efforts to direct applicable request of such Services to Supplier under this Agreement. Unless otherwise expressly stated herein, this Agreement does not confer on Supplier the right to be the exclusive provider of the Services to the University.
- 2.0 **Term.** The initial term of this Agreement will begin on 11/15/2018 and end on 11/14/2021 or the conclusion of any Wind down Period, whichever occurs later. At the end of the initial term, this Agreement will be evaluated. If the parties agree that it is a mutually beneficial relationship, the Agreement may be extended in writing for up to two (2) additional years.
- 3.0 **Performance Standard.** Supplier agrees to perform the Services described in this Agreement to the reasonable satisfaction of the University and with the standard of care and skill of an expert regularly rendering Services of the type required by this Agreement, and in conformance with all applicable federal, state, local and University law, regulation, ordinance and license.
- 4.0 **Warranties and Representations.** Both Parties acknowledge that each Party is relying on these representations and warranties as essential elements to this Agreement, representing as they do, material inducements, without which either Party would not have entered into this Agreement.
 - 4.1 **General Services Warranty.** Supplier warrants that all Services provided shall conform to the level of quality performed by experts regularly rendering this type of Service. Supplier warrants for ninety (90) days after accepted completion of a requested Service that its Services are fully satisfactory to the University and will repair, replace or redo at no additional cost to the University any unsatisfactory Services.
 - 4.2 **Cooperation.** University represents and warrants that it will provide an appropriate and reasonable level of cooperation with Supplier and the subcontractors on matters necessary to effectuate the terms of this Agreement and attendant SOWs
 - 4.3 **Qualifications.** Supplier warrants that it, as well as its employees, agents and subcontractors engaged to provide items or Services under this Agreement (collectively “Supplier Personnel”), has and will maintain all the skills, experience, and qualifications necessary to provide the Services contemplated by this Agreement, including any required training, registration, certification or licensure.

The required qualifications, by way of example only and without limitation, shall expressly include (a) all qualifications identified in Exhibit A.

4.4 **Supervision of Subcontractors.** Supplier warrants that it will employ reasonable commercial efforts to ensure that its Subcontractors do not act in ways that would violate the terms of this Agreement if Supplier acted in a similar way. Supplier will notify University should it become aware of acts or conditions of a Subcontractor that would violate the terms of the Agreement if such acts or conditions were those of the Supplier.

4.5 **Conflict of Interest.** The Parties warrant that to the best of their knowledge, there exists no actual or potential conflicts of interest that would impact or interfere with the respective obligations of the Parties under this Agreement and that the Parties will inform each other if it becomes aware of any actual or potential conflicts of interest.

For the avoidance of doubt, the University acknowledges that Supplier is and will be working with other postsecondary institutions to provide similar services under separate agreements. Supplier acknowledges that University is and will be working with other vendors to provide similar services under separate agreements.

4.6 **Nondiscrimination.** The Parties warrant that they are equal opportunity employers and that, during the performance of this Agreement, they will comply with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976.

4.7 **Good Standing.** The Parties warrant that they are legally organized entities in good standing under the laws of the state of their organization and, where required, in good standing under the laws of the State of Michigan and that the persons executing this Agreement on behalf of such Party has been duly authorized and empowered by all necessary corporate actions to execute this Agreement.

4.8 **Noninfringement.** Supplier warrants that the Supplier's Services and/or the University's use of products, processes, techniques and methodologies provided by Supplier or developed by Supplier shall not infringe upon the intellectual property rights or other proprietary rights of others. University warrants that Supplier's use of University's products, processes, techniques and methodologies provided by University or developed by University shall not infringe upon the intellectual property rights or other proprietary rights of others.

4.9 **Not Excluded.** Supplier warrants that neither Supplier, nor, to the best of Supplier's knowledge, Supplier Personnel and/or any of its Principals; is excluded from participating in the Medicare or Medicaid program nor currently debarred, suspended, proposed for debarment, declared ineligible for the award of contracts by any U.S. Federal agency or listed in the U.S. Government System for Award Management (SAM) (www.SAM.gov) in accordance with Executive Orders 12549 and 12689, "*Debarment and Suspension*".
Supplier shall immediately notify the University if it or Supplier Personnel and/or any of its Principals becomes debarred or suspended during the term of this Agreement.

Supplier further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Supplier or its affiliates, or to the best of its knowledge, against any Supplier Personnel. Supplier agrees that it shall not perform any act that shall cause Supplier to be excluded from a federal health care program or debarred, suspended or listed in the U.S. Government System for Award Management (SAM) as excluded from participating in Federal Procurement or Nonprocurement Programs during the term of this Agreement.

"Principals" for the purposes of this certification, means officers; directors; owners; partners; principal investigators; and persons having primary management or supervisory

responsibilities with a business entity (e.g., general manager; plant manager; head of a subsidiary, division or business segment, and similar positions).

5.0 Financial Arrangement. The detailed financial arrangement is in Exhibit B.

6.0 Termination.

6.1 Termination for Breach. Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided the breach continues for thirty (30) calendar days ("Cure Period") after receipt by the breaching party of written notice of the breach from the non-breaching party. Cure of the breach within the Cure Period shall continue the Agreement in full force and effect, provided however three (3) breaches of a material provision are an independent material breach not subject to cure.

The Parties acknowledge that, in certain cases, it is possible that a Party may cure a breach but that the impact of the cure may take longer than thirty (30) days to notice. Supplier acknowledges that University may always terminate this Agreement after the Cure Period if, in its reasonable assessment, it must do so in order to maintain the reputation of the University as a world class educational institution.

6.2 Immediate Termination. The University shall have the right to terminate this Agreement immediately upon notice to Supplier should any of the following situations occur:

- 6.2.1 Supplier or Supplier Personnel do anything to harm the business reputation of the University, including, without limitation, assignments pursuant to Section 16.4.;
- 6.2.2 Supplier or any Supplier Personnel is excluded from a federal health care program;
- 6.2.3 If any warranty or representation of the Supplier in this Agreement is or becomes false or untrue that the Supplier knew or should have known was or become false or untrue;
- 6.2.4 A person's health or safety is or may be in imminent and serious danger due to the actions or inaction of Supplier or Supplier Personnel;
- 6.2.5 There may be imminent and serious harm to the environment or the University property from Supplier's acts or inactions or those of Supplier Personnel; or
- 6.2.6 The University reasonably determines Supplier has violated a law in providing the Services.

6.3 Effect of Termination. Upon notice of termination for any reason under this Agreement, Supplier shall cease all activity at the conclusion of the Wind Down Period (see Section 6.5). Supplier has sixty (60) days from the date of conclusion of the Wind Down Period to submit final invoices for final reasonably satisfactory Services up to the point of conclusion of the Wind Down Period under this Agreement. University will have no obligation to assist in billing issues or issue payment under the terms of this Agreement for invoices submitted after the sixty (60) day period.

6.4 Change in Law. If, subsequent to the execution of this Agreement, it is determined by either party's legal counsel that this Agreement or any of its provisions may violate or does violate any law, rule, or regulation, the parties agree to renegotiate the provision(s) so that it (they), as well as this entire Agreement, complies with the law, rule or regulation. If the parties are unable to come to an agreement within thirty (30) calendar days, either party may, without further notice, immediately terminate this Agreement.

6.5 Wind Down Period. In the event of expiry or termination of this Agreement, the Parties agree that, as long as such extension is permitted by law, the terms of this Agreement will be extended so that the then-current students will be given the opportunity to complete the

applicable Program during the period described in this Section (the “Wind Down Period”). The Wind Down Period will commence on the effective date of expiry or termination and continue for a period no less than the time necessary for then-current students to complete their applicable Programs. The Parties may extend the Wind Down Period further than required herein upon mutual agreement. During the Wind Down Period, no new students will be added to the applicable Programs and marketing for the applicable Programs will cease. All other obligations of the Parties under this Agreement required to ensure that then-current students receive the same quality of service from the Parties during the Wind Down Period as prior to expiry or termination shall survive during the Wind Down Period, including but not limited to the following: (a) Supplier shall ensure that quality and effectiveness of the services during the Wind Down Period are not diminished from the quality and effectiveness that Supplier was required to provide previously and (b) University shall continue to pay for Supplier Services pursuant to the terms of the Agreement. The obligations of the Wind Down Period shall cease in the event all students have completed or withdrawn from the applicable Programs.

- 7.0 **Compliance with Laws, Policies & Procedures.** Supplier is advised that the University has established a compliance program to assure compliance with applicable laws and University policies designed to prevent and detect fraud, waste, and abuse. To the extent applicable to the Services, Supplier shall fully comply with all federal, state, local, and University laws, rules, regulations, ordinances, policies and licenses, including applicable building policies and procedures, the University’s Ordinances (reference website <http://www.umich.edu/~regents/ordinance.html>) and any standards of the Centers for Medicare and Medicaid Services (“CMS”), Michigan Department of Community Health (“MDCH”) and The Joint Commission , all as may be amended from time to time. Supplier acknowledges that Information about (1) the UMHS Compliance Program, (2) UMHS policies and procedures, (3) federal and state false claims and false statements laws, as well as (4) information about whistleblower protection under these laws, is available at <http://www.med.umich.edu/vendors/>. Supplier agrees to further disseminate information about applicable University policies, as necessary, to ensure that all Supplier Personnel and subcontractors, as applicable, involved in performing the Services are aware of the existence and location of applicable University policies as well as how and where to make reports to the University regarding any compliance concerns. To the extent that University policies provide for reviews or audits of claims or services arising from this Agreement, Supplier agrees to participate in such audit insofar as it is relevant and applicable to Supplier and Supplier Personnel’s interaction with University. If Supplier identifies potential non-compliance with any applicable laws, regulations or policies in connection with the provision of the Services, Supplier shall promptly contact the University of Michigan Compliance Hotline at 866-990-0111 and provide details concerning the suspected wrongdoing sufficient to facilitate an investigation by University.

Supplier shall be solely responsible for insuring that any recommendations made in connection with the Services comply with all applicable federal, state, local and University laws, rules, regulations, policies and procedures. Unless otherwise expressly provided for in this Agreement, Supplier shall obtain and comply with all permits, licenses and similar authorizations that are necessary to provide the Services. By executing this Agreement, Supplier warrants and represents that it has all legally required licenses and permits needed to perform the Services.

8.0 **Patents, Copyright, Data and Documents.**

- 8.1 Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with this Agreement, Supplier shall furnish to the University, within thirty (30) days of the creation or conception, the complete information with respect to such invention or discovery and the University shall have the sole power to determine whether and where a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent that may result. Supplier shall, at the University’s

expense, execute (or cause to be executed) all documents and do (or cause to be done) all things necessary or proper with respect to such patent application, including causing Supplier Personnel to do the same. For the avoidance of doubt, improvements invented solely by Supplier Personnel that Supplier makes on its own technology and services and to publicly available technology shall not be the subject of patent applications by the University or subject to any proprietary claim by University.

- 8.2 All materials conceived or prepared by Supplier under this Agreement including but not limited to any and all notes, designs, drawings, memoranda, reports, computer programs and code (including supporting data), and the technical data, if any, furnished by Supplier pursuant to this Agreement or developed by the Supplier in connection with the performance of Services (“Work Product”) shall be the property of the University. All Work Product shall be delivered to the University upon demand, and the University shall have the right to use Work Product for any purpose that it may deem desirable without the necessity of further compensating Supplier or any other person or persons for their use.

Supplier hereby grants to the University all rights, title and interest in and to all Work Product, and Supplier agrees that Work Product shall be considered “works made for hire” made exclusively for the University under U.S. copyright laws. Supplier shall execute all documents and do all things necessary or proper to give full effect to the provisions of this section. In the event any Work Product shall not be a work for hire under the U.S. copyright laws, Supplier and Supplier Personnel hereby assign to the University all rights, title and interest in the work and agree to execute whatever assignment of copyright and ancillary and confirmatory documents as may be required or appropriate to transfer exclusive title in the Work Product and any copyright in it to the University.

For the avoidance of doubt, Supplier’s computer programs; technical data unrelated to University’s programs, courses, students, and staff; and its previously created works, inventions, and the like will not be transferred to the University. Supplier does, however, grant to the University, its personnel, its students, alumni, and prospective students a license, during the term of this Agreement, to use the materials described in the previous sentence as consistent with the intentions and services in this Agreement.

- 8.3 All data created under this Agreement and/or in the performance of this Agreement by Supplier and/or its Subcontractors shall be considered University data and shall belong to the University. Supplier and its Subcontractors shall make any and all University data available to University in a timely manner at the termination or expiry of this Agreement or at the conclusion of the Wind Down Period, as applicable.

- 9.0 Insurance Coverage and Levels. Unless more specific insurance provisions are attached, Supplier shall, at Supplier’s expense, obtain and maintain the following coverages:

- 9.1 Commercial general liability insurance, including contractual products and completed operations insurance (\$1 million per occurrence/\$3 million annual aggregate).
- 9.2 Professional Liability/Errors and Omissions Insurance with limits not less than \$1 million per occurrence and \$2 million annual aggregate if the activity is deemed professional in nature or performed by someone with a professional designation and is excluded from the Commercial General Liability Insurance.
- 9.3 Worker’s Compensation at statutory limits in accordance with the appropriate State of jurisdiction including Employer’s liability (with minimum \$500,000).

- 9.4 Automobile liability for owned, non-owned and hired vehicles minimum limit (\$1 million each accident).
 - 9.5 Supplier agrees to have the Regents of the University of Michigan added as additional insured with respect to Commercial General Liability Insurance for purposes of contract performance and any personal or property damages arising out of Agreement.
 - 9.6 Supplier agrees to provide the University with thirty (30) days prior written notice of any reduction in limits or cancellation of any of the above insurance.
 - 9.7 If any of the required insurance is on a “claims made” basis and is cancelled during the term of this agreement, Supplier agrees to purchase **tail coverage** or **prior acts coverage** so that such insurance is in effect from the date the Agreement is executed to three (3) years after its termination.
 - 9.8 Supplier shall provide the University with a certificate of the above insurance coverages and amounts. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Supplier of its liabilities and obligations under this Agreement.
- 10.0 **Indemnity.** Each party shall defend, indemnify and hold harmless the other party, its board members, officers, employees, agents and students (if the University) from and against any costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney fees, which may arise out of the indemnifying party’s acts or omissions under this Agreement for which the indemnifying party would be liable in law or equity.

The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the other party, at its expense, to participate in the defense or settlement of the claim. When a claim is resolved by the indemnifying party’s payment of money, it shall have final authority regarding defense and settlement. When a claim resolution requires equitable relief against the non-indemnifying party or the indemnifying party has not or will not pay the money required for resolution, the parties shall cooperate regarding defense and settlement.

11.0 **Audit.** The Supplier is responsible for keeping accurate and reasonable records related to its performance and obligations under this Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement. The Supplier agrees that the University or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. The Supplier shall make available to the University or its agents all such records and documents for audit on the Supplier’s premises during regular and reasonable working hours within ten (10) business days of a written request for availability. Supplier agrees to either (a) allow the University to make and retain copies of those documents useful for documenting the audit activity and results or (b) sequester the original or copies of those documents the University identifies for later access by the University. The Supplier further agrees to disclose within ninety (90) days of receipt any independent auditors’ reports, which bear directly on the performance or administration of this Agreement.

The right to audit shall include, upon thirty (30) days notice, periodic examinations of records throughout the term of the Agreement and for a period of three (3) years after its termination. The right to audit shall also include Supplier’s reasonable efforts to grant similar access to records of agents and subcontractors hired by the Supplier for the purpose of fulfilling the Agreement. In the

event that audits discover substantive findings related to fraud, misrepresentation or non-performance, the University may recoup the costs of the audit work from the Supplier.

- 12.0 **Confidentiality.** Supplier shall keep confidential and not disclose to third parties any information developed or created under this Agreement or provided by the University or by private individuals (including students, faculty, staff, prospective students, among others), organizations or public agencies pursuant to this Agreement, including protected financial information under Gramm-Leach-Bliley Act, unless Supplier has received the prior written consent of the University to make the disclosure or unless required by law or legal process. Only Supplier Personnel with a need to know may have access to or use University information.

This obligation of confidentiality does not extend to information that is or shall become through no fault of Supplier available to the general public.

- 12.1 University shall protect and not disclose all confidential information provided to University by Supplier in the course of this Agreement in a manner similar to which it would protect its own confidential information.

- 13.0 **Removal of Supplier Personnel.** All Supplier Personnel shall have a background appropriate for the location and the type of work to be performed by the individual, including without limitation any disqualifying criminal background. If the University becomes aware that Supplier or any Supplier employee, agent or contractor (collectively "Supplier Personnel") (a) does not have the background appropriate for the location and type of work to be performed by the individual, or (b) repeatedly fails, in the University's sole discretion, to perform in a competent manner, the Supplier Personnel shall no longer be acceptable to the University. Under either circumstance, after the University notifies Supplier in writing citing the grounds and specific supporting facts. Supplier shall no longer schedule the Supplier Personnel to provide or support Services for the University under this Agreement or any other Agreement with the University. The University, in its sole discretion, may modify this prohibition upon presentation in writing by Supplier of adequate reasons and facts for modifying the prohibition.

If Supplier learns during the term of this Agreement of any lapse in qualifications of any of the Supplier Personnel to meet the warranted qualifications it must immediately remove the affected personnel whose qualifications have lapsed and inform the University of the date when the affected personnel was no longer qualified to provide the Services being performed by them.

14.0 **Operational Matters.**

- 14.1 On-site Supplier Personnel shall follow and adhere to the University policies and procedures applicable to the provision of the Services including, by way of example only and without limitation (a) sign-in procedures, (b) identification badges, (c) executing confidentiality statements, (d) participation in any required training, parking regulations.
- 14.2 Except as otherwise expressly provided in this Agreement, or agreed to by University in advance in a mutually agreed upon budget, Supplier shall be responsible for payment of all business expenses incurred while providing the Services.
- 14.3 Supplier agrees to provide a separate statement of work (SOW) for each Subcontractor. Each SOW must be approved by the requesting department prior to any billable work beginning.
- 14.4 Supplier agrees to timely cooperate and assist with any applicable performance improvement and quality assurance activities of the University as they may relate to the Services.

- 14.5 **Supplier Cooperation.** Supplier shall cooperate and make adjustments as necessary in the methods and timing for provision of Services under this Agreement so that other Suppliers and University personnel can perform their independent obligations to the University.
- 14.6 **Limitation on Supplier Personnel.** Supplier agrees that unless otherwise approved by the University in writing in advance, no Supplier Personnel who would fall within categories a, b, or c, below, shall provide services if any of the following have occurred: (a) any *applicable* registration, certification, licensure (including where applicable, Medicare/Medicaid provider status) of Supplier Personnel, in any state, is or has been threatened with limitation, suspension, revocation or exclusion; (b) any *applicable* registering, certifying, or licensing board reprimands, sanctions or otherwise disciplines Supplier Personnel; or (c) a negligence or malpractice claim related to the provision of the Services or similar services has been asserted against Supplier Personnel.
- 14.7 **Access to Books and Records.** The parties agree that *if* this Agreement is subject to the Medicare statutes and regulations governing access to books and records of subcontractors (Section 952 of the Medicare and Medicaid provisions of the Omnibus Reconciliation Act of 1980, which amends section 1861(V) (1) of the Social Security Act), Supplier shall retain and, for four (4) years after Services are furnished by Supplier, shall allow the authorized representatives of the Comptroller General, the University, and the Department of Health and Human Services access to this Agreement and to the books, records, and other documents of Supplier that are necessary to verify the nature and extent of the costs of the Services. In the event Supplier receives a request for access, Supplier agrees to notify the University immediately and to consult with the University regarding what response will be made to the request. This Agreement to provide access shall continue for four (4) years after the Services are terminated.

If Supplier carries out any responsibilities under this Agreement through the use of a subcontractor, including any organization related by ownership or control with Supplier, when the subcontract is worth or costs \$10,000 or more over a twelve (12) month period, Supplier shall obtain and forward to the University the subcontractor's written promise to be bound as Supplier is under this same access Agreement.

- 15.0 **Duties of the University.** Except as otherwise expressly provided in this Agreement, the University will furnish Supplier with the space, facilities and accommodations, the University deems reasonably necessary to support Supplier in the provision of the Services contemplated by this Agreement.

- 16.0 **Miscellaneous.**

- 16.1 **Use of the University Name and Marks.** The University acknowledges Supplier's right to make, without the consent of the University, public statements regarding the existence of the contract and its terms and conditions to accurately identify the products or services being supplied. However, except as permitted by the previous sentence, Supplier may not, without the prior written consent of the University's Office of Global Communications, make any public statement (for example through a press release or any form of advertisement) characterizing the University's relationship with Supplier or implying or stating the University's endorsement of Supplier or Supplier's product or services. The University may withhold its consent in its absolute discretion. Supplier acknowledges that the University will require ten (10) business days to consider any request for consent. Notwithstanding the foregoing, Supplier and its Subcontractors may use University marks provided by the University solely in connection with Supplier's responsibilities and obligations under this Agreement. In all cases, Supplier or its personnel will not use or will refrain from using University marks over the University's objection.

- 16.2 **Use of Premises or the University Property.** Supplier shall neither use nor allow Supplier Personnel to use any part of the University premises or property for any purpose other than the performance of the Services under this Agreement. Without limiting the generality of the statement above, Supplier shall not use the University in any manner that might jeopardize the Medicare provider status of the University or the tax exemptions or casualty insurance of the University.
- 16.3 **Independent Contractor Status of Parties.** It is expressly understood that Supplier is an independent contractor and not the agent, partner, or employee of the University. Supplier and Supplier Personnel are not employees of the University and are not entitled to tax withholding, Worker's Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Supplier shall not have any authority to enter into any contract or agreement to bind the University and shall not represent to anyone that Supplier has such authority.
- 16.4 **Assignment.** Neither party may subcontract, assign, or transfer this Agreement or any interest or claim under this Agreement without prior written approval of the other party, which shall not be unreasonably withheld. Notwithstanding any consent by a party to any assignment, the other party shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirements, in writing, by the consenting party. The Supplier shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.
- Notwithstanding the foregoing, the Supplier may assign this Agreement, with sixty (60) days' notice to University, to an acquirer of Supplier or of substantially all of Supplier's assets, without the prior written consent of University, unless the University has good and reasonable cause to object to such assignment, and submits such objection within one (1) calendar month of receiving such notice of assignment.
- 16.5 **Notices.** Any notice to either party must be in writing, specifically reference this Agreement and signed by the party giving it. Service upon the University shall be addressed to: Procurement Services, 7071 Wolverine Tower, 3003 S. State Street, Ann Arbor, Michigan, 48109-1282 USA. Service upon the Supplier shall be served to the address indicated on this Agreement for Supplier (or to such other address as may be later designated by written notice). Notice shall be by personal delivery, recognized overnight courier service, or by the United States mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices shall be effective when received, but in no event later than three (3) days after being placed in the hands of the United States Post Office or private courier service.
- 16.6 **Entire Agreement, Amendment.** This Agreement and its Exhibits (including Exhibits A, B, C, D and any additional Statements of Work) constitute the entire understanding between the parties with respect to the subject matter and may not be amended except by an agreement signed by Supplier and an authorized representative of the University. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties.
- 16.7 **Severability.** The terms of this Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

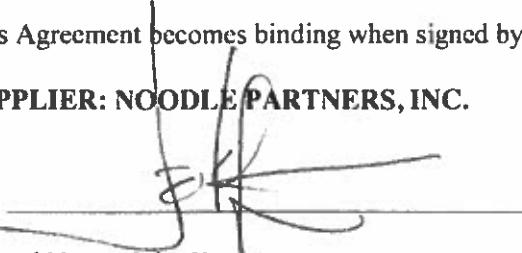
- 16.8 **Governing Law, Construction and Venue.** This Agreement shall be governed by and construed under the laws of the State of Michigan without regard for principles of choice of law. Any claims, demands, or actions asserted against the University shall be brought in the Michigan Court of Claims. Supplier, its successors and assigns, consent to the jurisdiction of a court with applicable subject matter jurisdiction sitting in the state of Michigan with respect to any claims arising under this Agreement.
- 16.9 **Headings.** The paragraph headings in this Agreement are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.
- 16.10 **Waiver.** No delay or omission by either party to exercise any right or remedy under this Agreement shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
- 16.11 **Survivability.** Provisions surviving termination or expiration of this Agreement are those which on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, confidentiality, warranty and choice of law and venue.
- 16.12 **Execution.** This Agreement may be executed in duplicate, each of which when executed and delivered shall be an original. The parties acknowledge and agree that this Agreement has been mutually discussed, negotiated, and drafted by the parties.
- 16.13 **No Third Party Rights.** Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.
- 16.14 **Force Majeure.** Neither Supplier nor the University shall be liable for failure to perform its respective obligations under the Agreement, except nonperformance of payment for obligations already incurred, when failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party (“Force Majeure Event”). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall: (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible, including, as applicable, abiding by the disaster plan in place for the University. In the event that any Force Majeure Event delays a party’s performance with respect to a material aspect of its obligations hereunder for more than forty-five (45) calendar days following notice by the delaying party, the other party may terminate this Agreement immediately upon written notice.
- 16.15 **Tax Exempt Status.** Supplier acknowledges that the University is a tax-exempt institution, granted such status by authorized taxing units of State of Michigan, and is exempt from Federal Excise Tax and Michigan General Sales Tax (see Michigan Public Act 167 of 1933,Section 4 as amended).
- 16.16 **Dispute Resolution.** Supplier and the University will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary.
- 16.17 **Freedom of Information Act.** Nothing in this Agreement shall in any way limit the ability of the University to comply with any laws or legal process concerning disclosures by public bodies. The parties acknowledge that any responses, materials, correspondence or

documents provided to the University are subject to the State of Michigan Freedom of Information Act ("Act") and may be released to third parties in compliance with that Act or any other law will not constitute a breach or threatened breach of this Agreement.

- 16.18 **Supplier Damage to the University Property.** Without regard to any other section of the Agreement, Supplier shall be responsible for the costs to return to "as was" condition from any damage caused to the building, grounds, or other equipment and furnishings caused in whole or part by Supplier Personnel while performing activities arising under this Agreement. Supplier shall immediately report in writing the occurrence of any damage to the Building/Project Manager.
- 16.19 **Supplier Clean-up.** Supplier will remove all packing materials, rubbish and dirt from the University premises associated with Supplier's provision of Services under this Agreement.
- 17.0 **Confidentiality of Health Information.** The parties agree that Supplier's provision of the Services under this Agreement does not qualify Supplier as a "Business Associate" of the University as defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, (which act and regulations as amended, restated and superseded from time to time are collectively referred to as "HIPAA"). Supplier will take all necessary steps to ensure Supplier Personnel do not seek or obtain access to protected health information created, maintained, or received by the University. In the event the scope of Supplier's Services changes or HIPAA changes (including governmental guidance offered on HIPAA) such that the University concludes the Agreement must be amended or further documents executed to ensure the University's compliance with HIPAA, the parties agree to promptly take all actions necessary to ensure the University compliance with HIPAA.

This Agreement becomes binding when signed by both parties.

SUPPLIER: NOODLE PARTNERS, INC.

By: 

Printed Name: John Katzman

Title: Chief Executive Officer

Date of Signature: 11/13/18

Address (for notices):

Noodle Partners

860 Broadway

Sixth Floor

New York, NY 10003

FOR THE REGENTS OF THE UNIVERSITY OF MICHIGAN:

By: 

Printed Name: Tony Burger

Title: Interim Director, Procurement Services

Date of Signature: 12-7-2018

Address (for notices):

Procurement Services

7071 Wolverine Tower

3003 S. State St.

Ann Arbor, MI 48109

EXHIBIT A
SCOPE OF SERVICES
General Services

1.0 **Scope of Services to be Provided.**

- 1.1 **Program Services Advisor** For each Program, Supplier will act as a “Program Services Advisor,” in connection with which Supplier will (a) oversee all Subcontractor Services to ensure the Services are performed in accordance with the agreed upon terms and the high standards which University and Supplier strive to meet, and (b) advise University using its in-depth experience and strategic knowledge to assist University in creating a state-of-the-art online program (“Program”).
- 1.2 **Catalog of Services** The parties expect that each Program will have unique needs. The following items describe service areas relevant to online degree programs. University can choose, in its sole discretion, to offer these services internally, or to have Supplier hire and manage Subcontractors to provide these services:
 - 1.2.1 **Marketing**. Supplier and its Subcontractors can support a Program in conducting market research, and formulating and executing against a marketing strategy to attract students into the Program. Marketing services may include, but are not limited to, market research, branding, search engine optimization, microsites, strategic partnerships, public relations, and communications.
 - 1.2.2 **Recruitment**. Supplier can work with University to train the relevant Subcontractor on the Program and ensure that the Program is receiving complete applications for review as outlined in the admissions’ requirements for the Program. Supplier represents and warrants, here, that it (and its Subcontractors) and its (and their) employees, consultants, and agents shall perform their obligations under this Agreement in compliance with the Department of Education incentive compensation regulation, C.F.R. 668.14(b)(22), and the related Dear Colleague Letter issued March 17, 2011 (“Implementation of Program Integrity Regulations”) and it and its Subcontractors do not and will not pay employees incentive compensation based on their activities under this Agreement. In addition, Supplier asserts that it and its Subcontractors are separate and unaffiliated entities from University, with no decision-making authority on behalf of University. For the sake of clarity, Supplier acknowledges that it its Subcontractors have no authority whatsoever to determine enrollment, admission, or financial aid in University degree or certification programs. Supplier acknowledges that any compensation by Supplier of its employees, agents, or contractors who perform any activities for the University under this Agreement that does not comply with Section 487(a)(20) of the Higher Education Act of 1965, as amended (20 U.S.C. § 1094(a)(20)), or any successor provision, or the regulations promulgated there under by the U.S. Department of Education is prohibited.
 - 1.2.3 **Instructional Design & Media Production**. Supplier and its Subcontractors can, solely at University’s request, support a Program’s instructional design efforts by working with the Program’s instructional designers, faculty, and staff to create and periodically update any curricular and co-curricular materials or activities for

the Program. Supplier and the relevant Subcontractors, at the request of University, can provide advice on best practices for online learning and how to design curricular and co-curricular components for the Program.

- 1.2.4 **Events and Student Groups.** Supplier and its Subcontractors can, solely at University's request, support a Program in developing a plan for integrating students into both small and large-scale campus events (e.g., lectures, panel discussions, graduation activities), and for identifying pathways for connecting existing student groups in the Program and/or creating new opportunities for student groups in the Program.
- 1.2.5 **Immersions.** Supplier and its Subcontractors can, solely at University's request, assist faculty and staff in developing immersion experiences, and meet the curricular and co-curricular goals of the Program. Supplier can also support faculty and staff through hiring and managing Subcontractors to help with the planning and implementation of the immersion programs. This can include, but is not limited to, managing immersion student attendance and communications, arranging accommodations, and coordinating meals and social outings.
- 1.2.6 **Student Advising Support.** Supplier and its Subcontractors can, solely at University's request, provide student advising support. Student advising support can include, but is not limited to: answering questions about program requirements; registration processes; the academic calendar; add/drop deadlines, processes and procedures for registering a disability; and how to access wellness services.
- 1.2.7 **Student Success Support.** Supplier and its Subcontractors can, solely at University's request, provide student success support. Student success support can include, but is not limited to: providing students access to advisors and/or creating content and programming that addresses: planning for success and goal setting; troubleshooting potential obstacles for success; time management; and support through personal challenges (including referrals to University resources). Supplier and its Subcontractors can also provide the Program with patterns of at-risk behavior identified through interactions with students and/or through retention data from the Analytics Dashboard.
- 1.2.8 **Student Academic Support.** Supplier and its Subcontractors can, solely at University's request, provide student academic support. Student academic support can include, but is not limited to, developing instructional videos and/or other resources (e.g., a tutoring platform), as well as synchronous tutoring and writing support to assist in students' academic success.
- 1.2.9 **Practicum Placement.** Supplier and its Subcontractors can, solely at University's request, assist the Program with the placement of students into a practicum, where they will achieve the practical experience they need to complete their degree.
- 1.2.10 **Career Services.** Supplier and its Subcontractors can, solely at University's request, support a Program in the development of career services resources and programming for students in the Program. This may include, but is not limited to,

creating videos and/or other resources, and working with Program staff to translate in-person programming to an online environment.

- 1.2.11 **Learning Stack/Tools.** Supplier and its Subcontractors can, solely at University's request, integrate with University's existing systems to build an integrated learning stack, including the Learning Management System, synchronous video, plagiarism review, online proctoring, video management services, and other required tools, subject to University's approval.
- 1.2.12 **Technology Integration.** Supplier and its Subcontractors can, solely at University's request, work with University to ensure the integration of Subcontractors' technologies and services with University's technologies and services. The goal is to deliver a cohesive and successful Program. The University has the option to employ any aspect of Supplier's technology platform, including but not limited to, marketing, recruiting, and the learning stack. The delivery of the Program will run on this platform, side by side with the normal University technology stack. It is the intent of the Parties that this stack, which Supplier will improve on an ongoing basis, will act as a sandbox for new technologies that may be useful to the University campus overall.
- 1.2.13 **Technical Support.** Supplier can, solely at University's request, support faculty, staff, and students through hiring and managing Subcontractors to provide technical support. Technical support can include, but is not limited to: LMS functional support; video-conferencing support (e.g., Zoom); username assistance; video and/or audio troubleshooting; and general tech questions relevant to the online learning environment.
- 1.2.14 **Analytics Dashboard.** Supplier will, solely at University's request, provide University access to information in the form of reports that benchmark data including, but not limited to: marketing performance; website analytics; student academic engagement and performance; and student co-curricular engagement related to the Program. The reports will display data for all services for which Supplier has access to the relevant systems. Benchmarks will be established in consultation with the Program for courses and user engagement. Data shown on the reports will be updated daily. Supplier will employ what it considers to be generally accepted "best practices" in the collection and use of University's data, but in all cases will comply with University's data governance policies.

1.3 **Obligations of University**

- 1.3.1 **University Responsibility Generally:** University shall be exclusively responsible for (i) creating and exercising ultimate authority over all its degrees, courses, content, and curricula; (ii) providing instruction to enrolled students; and (iii) and setting admissions, financial aid, graduation, and academic requirements and decisions.
- 1.3.2 **Admissions.** Admissions decisions are within the sole purview of University based on criteria established by University and consistent with any University, State, or accreditation regulations.

- 1.3.3 **Financial Aid.** University will be solely responsible for the administration of all financial aid programs; Supplier shall not be involved in any manner in the award or disbursement of financial assistance or perform any work related to any of University's responsibilities related to financial aid.
- 1.3.4 **Delivery of Degree.** University is responsible for student education and evaluation, including assignments, exams, grading and grading policy, probation standards, and the awarding and recording of credits and degrees, credentials and/or certificates, and the discipline and/or dismissal of students.
- 1.3.5 **Accrediting Agency Application Submission.** University will be responsible for securing any accreditations, registrations, and state and international authorization and licensure approvals with respect to the Programs as may be necessary to operate in any jurisdiction or to otherwise accomplish the activities set forth in the Agreement.
- 1.3.6 **Hiring and Management.** University will be responsible for hiring and managing all of its faculty and staff working with the Program.
- 1.3.7 **Student Academic Support.** University will be responsible for providing academic support it deems appropriate to students in the Program.
- 1.3.8 **Job Placement.** University will be responsible for providing career and job placement services it deems appropriate to students in the Program.
- 1.3.9 **Data Access & Service Support.** To the extent required for Supplier to provide Services hereunder, University will provide Supplier and Subcontractors the necessary data from the appropriate University's sources or systems required to create and manage the Programs and to inform the Analytics Dashboard. These data will be supplied to Supplier and Subcontractors via Application Programming Interface (API) or other mutually agreed, secure transfer methods. In addition, the University will give the Supplier and Subcontractors minimum necessary permissions to build and administer its Services in the Learning Management System (LMS). In connection with such access, University may require Supplier and Subcontractors to agree to additional systems access terms. To the extent the University does not grant Supplier with the necessary data, access or cadence, Supplier will not be held accountable for performing Services impacted by that lack of data, access or cadence.
- 1.3.10 **Licenses.** To the extent that the Supplier is using University systems' to deliver the Service, the University agrees to obtain the necessary permits, licenses and similar authorizations to access those systems, as required by law.
- 1.3.11 **Relevant Program Information.** University will coordinate with Supplier to provide Supplier relevant information (subject to the requirements of the FERPA and other relevant laws and regulations), solely to be used by Supplier in connection with providing the Services.

1.4 **Subcontractors**

- 1.4.1 **Use of Subcontractors.** Supplier will source, vet and, create agreements with Subcontractors to provide services that conform to Supplier's best practices.

Supplier will provide University all relevant agreements with Subcontractors providing services pursuant to this Agreement. If in its reasonable judgment, University determines, at any time, that a Subcontractor is not appropriate for quality, legal, or reputational reasons, Supplier will use its best efforts to find a substitute Subcontractor within thirty (30) days

- 1.4.2 **Supplier Direct Services as a Subcontractor.** In certain circumstances, Supplier can provide Services in the areas described in Section 1 above more effectively and/or efficiently than a Subcontractor. In those events, Supplier will perform those additional Services. Since Supplier's performing of those Services are outside of Supplier's Program Services Advisor functions for which it receives University Fees, Program Fees, or Credit Fees (as defined in Exhibit B of this Agreement), Supplier will invoice for those additional Services as the Subcontractor of such Service
- 2.0 **Changes, Alterations and Modifications to Services.** The University may, with good cause and with the consent of Supplier, such consent not to be unreasonably withheld, by a written order change the extent of the Services covered by this Agreement. Promptly upon receipt of the details of any change, Supplier shall either advise the University that the change will not affect its costs, or furnish: (a) a breakdown of estimated cost and changes to the Financial Arrangement of Exhibit B resulting from the requested change and (b) a statement of any necessary changes in the time of completion. Supplier's failure to advise the University within ten (10) days of the effect of any change in cost or completion time shall constitute Supplier's consent to conform to the change without change to the Financial Arrangement, or without change in other terms and conditions of this Agreement. If the change causes a material increase or decrease in costs, then an equitable adjustment of the Financial Arrangement to be paid to Supplier shall promptly be negotiated by the University and Supplier and incorporated as an amendment to this Contract.

3.0 **Reporting.**

- 3.1 In performing the Services under this Agreement, Supplier shall report to Eliot Gattegno, Managing Director, Digital Education, Ross School of Business.
- 3.2 Reports Format.

After the execution of this Agreement, Supplier will consult with the University for the purpose of designing financial and operating reports which can be generated periodically by Supplier's accounting system and operating systems and which are satisfactory to the University. These reports can be either printed documents or Excel spreadsheets. The Supplier will provide these reports at no cost to the University.

EXHIBIT B
FINANCIAL ARRANGEMENT AND ADDITIONAL UNIVERSITY COMMITMENTS
General Services

The University will pay fees to Supplier for Services performed under this Agreement as follows:

1.0 Supplier Fee.

For the fees listed in this Section, Supplier will provide its expertise and perform its duties as Program Services Advisor as set forth in Exhibit A. The fees indicated are Supplier's standard Service fees for that function and shall apply unless modified in a specific agreement for a particular Program:

- a. \$12,000/month Service fee for University ("University Fee").
- b. \$6,000/month for each Program ("Program Fee").
- c. A cumulative fee for all credit hours taken by all students accessing any Program or portion of the Program during an academic year calculated as per the Program Credit Fees Chart below ("Credit Fees"):

Program Credit Fees Chart (Based on total University final enrollment across all Programs)	
Credit Tier	Fee per Credit
For the first 10,000 credits	@\$68
Then, for the next 10,000 credits	@\$52
Then, for the next 10,000 credits	@\$36
Then, for the next 10,000 credits	@\$20
Then, for all credits thereafter	@\$4

By way of clarification, if the cumulative total of all credits taken by all students accessing any Program during such academic year ("Total Credits") equals 9,500, the fee per credit will be equal to \$68 per credit or \$646,000. If the Total Credits is 26,000, the fee will be 10,000 times \$68 per credit (\$680,000) plus 10,000 times \$52 per credit (\$520,000) plus 6,000 times \$36 per credit (\$216,000) for a total of \$1,416,000.

Each of the University Fee and Program Fees (collectively, “Fixed Fees) and Credit Fees (together with “Fixed Fees,” “Supplier Fees”) will increase each year on each annual anniversary of the effective date hereof during the term of the Agreement by no more than the lesser of (i) 2.5% or (ii) at a rate equal to the annual average increase in tuition that the University charges its students for the Programs under this Agreement..

1.1 Subcontractor Fees

- 1.1.1 Each Subcontractor, including Supplier when acting as a Subcontractor, will charge such fees and expenses as set forth in its applicable subcontract (together, the “Subcontractor Fees”). Supplier will remit such payment to Subcontractor(s) subsequent to its receipt of such payment of Subcontractor Fees from University.
- 1.1.2 These Subcontractor Fees will be prorated for partial months as appropriate.
- 1.1.3 Any increases in Subcontractor Fees (e.g. anniversary increases) will be in accordance with the terms of the applicable subcontract and agreed to by the Parties in the applicable budget.
- 1.1.4 Authorization to subcontract specific services, the scope of those services, and the fees for those services will be commemorated in a Statement of Work between the parties that is incorporated into this Agreement.

2.0 Expenses.

- 2.1 Travel Expenses. Travel expenses must be itemized separately; actual and reasonable expenses according to the University policy as indicated in the Standard Practice Guide relating to travel expenses will be reimbursed with Supplier’s invoice. See website <http://www.finance.umich.edu/procurement/travelexpense>
- 2.2 Other Expenses. All reimbursable expenses, such as photocopies, supplies, photography, communication expenses and reproduction shall be billed at cost.
- 2.3 University Expenses. The University will be responsible for all costs associated with providing its academic programs.

3.0 Invoicing.

- 3.1 Fixed Fees will be invoiced monthly.
- 3.2 Credit Fees invoiced for each academic term will be calculated based on the final cumulative total of all credit hours taken by students accessing any Program through such academic term within such academic year after giving credit for all previous Credit Fees invoiced for such academic year. A reconciliation of Credit Fees invoiced will be done with the last Credit Fees invoice for the last academic term of each academic year. Credit Fees calculated by student enrollment will be invoiced the day after the add/drop deadline for each academic term, but may be adjusted in extenuating circumstances.
- 3.3 Subcontractor Fees will be invoiced monthly for all Subcontractor services that are expected to be rendered during that month as agreed to in the Statement of Work. To the extent the amounts billed by Subcontractor to Supplier for actual services rendered differ

from the amounts that Supplier bills the University for Expected Services to be rendered per the SOW, Supplier will reconcile those amounts and provide any appropriate adjustments.

- 4.0 **Payment Terms**. Payment will be made within thirty (30) days after the University's receipt of an invoice from Supplier.
- 5.0 **Taxes**. The fees, expenses and costs payable under this Agreement include all applicable taxes and shall not be changed as the result of the Supplier's failure to include any applicable tax, or as a result of any change in the Supplier's tax liabilities.
- 6.0 **Withhold Payment**. Upon providing notice and evidence for the set off, the University may withhold the whole or part of any payments to Supplier to the extent appropriate to set off University losses or costs to protect the University from loss, due to, but not limited to the following causes:
 - 6.1 Defective work not corrected.
 - 6.2 Damage to personnel or property of the University or third party caused by act, omission or negligence of Supplier, or its agents or employee.

EXHIBIT C
DATA PROTECTION

The University is committed to protecting its information and data from unauthorized use and disclosure. Protecting information assets is driven by a variety of considerations including legal, financial, compliance, and other business requirements. To this end, Supplier shall comply with the terms and conditions of this Data Protection Agreement (DPA) in its management and disclosure of University Data, as defined herein.

- 1.0 **Applicability to Other Agreements.** The University and Supplier acknowledge that there may be prior agreements executed between the parties (and their affiliates/Subcontractors) and that there may be future agreements executed between the parties (and their affiliates/Subcontractors) (referred to as “***Other Agreements***”) that may contain confidentiality and security provisions of a similar nature as set forth in the DPA. The parties agree that, to the extent of any conflict between the DPA and the Other Agreements, the terms of the DPA shall control. The DPA terms and conditions shall be in addition to, and not in lieu of, any more stringent terms and conditions that may exist in the Other Agreements. The terms of this DPA shall only apply to Supplier’s obligation to keep and safeguard University Data, and any requirements of University to keep confidential Supplier’s information are or shall be addressed in the Other Agreements. The terms and conditions of this DPA shall apply to Supplier and all of its affiliates. Supplier represents that the individual signing below has the authorization to bind Supplier and its affiliates to this DPA.
- 2.0 **University Data** not protected under this DPA includes information or data that is publicly available or later becomes available other than through a breach of this DPA or Other Agreement, known to Supplier or its employees, subcontractors or agents prior to such disclosure other than from the University, is independently developed by Supplier or its employees, subcontractors or agents without access to or knowledge of the University Data, or subsequently obtained by Supplier or its employees, agents or representatives from a Third Party without obligations of confidentiality. The term “University Data” is any information or data that meet any of the following criteria:
 - 2.1 **Institutional Data** refers to any information or data that satisfies one or more of the following criteria:
 - 2.1.1 Relevant to planning, managing, operating, controlling, or auditing administrative functions of an administrative or academic unit of the University;
 - 2.1.2 Created, received, maintained or transmitted as a result of educational, clinical, research or patient care activities;
 - 2.1.3 Generally referenced or required for use by more than one organizational unit;
 - 2.1.4 Included in an official University administrative report;
 - 2.1.5 Used to derive information or a data element that meets the criteria above; and/or
 - 2.1.6 Generated by a University workforce member or agent using any of the above information or data.
 - 2.2 **Data Protected by Law** refers to any information or data that is protected by federal, state or local law, including, without limitation, financial information under the Gramm-Leach-Bliley Act (“GLBA”), student information under the Family Education Rights and Privacy Act (“FERPA”), individually identifiable health information under the Health Insurance Portability and Accountability Act (“HIPAA”), and personally identifiable information under state security breach notification laws, as each are amended from time-to-time and as may be implemented by regulations, policies, edicts, opinions and practices.
 - 2.3 **Marked or Labeled Data** refers to any information or data that is marked or labeled by the University as “confidential”, “proprietary” or any similar designation.

2.4 Analytical Data refers to any information or data that is collected, processed, or aggregated based upon the behavior of University-owned institutional data and is classified as sensitive.

2.5 Sensitive Data refers to any information or data whose unauthorized disclosure will or may have an adverse effect on the University's reputation, resources, services or individuals.

3.0 Confidentiality and Data Security

3.1 Duty to Protect University Data. Supplier shall only use University Data as permitted by the Other Agreements, and shall not, directly or indirectly, disclose, copy, distribute, republish or allow any Third party to have access to any University Data, unless otherwise approved by University in writing. Supplier shall protect University Data in accordance with the terms of this DPA. In addition, Supplier represents warrants and covenants to University that it agrees that it complies with all applicable federal, state and local laws and regulations relating or pertaining to the use, disclosure, storage, handling and transmission of University Data. If Supplier has a need to disclose University Data to a Third Party, Supplier may disclose University Data to those Third Party vendors and consultants who have a need to know provided that such Third Party signs a confidentiality and non-disclosure agreement with substantially the same protections and restrictions as stated herein with such agreement naming the University as an intended third party beneficiary, and containing such other terms and conditions as reasonably requested by the University. Supplier may disclose University Data if so required by law (including court order or subpoena) in accordance with the procedures below.

3.2 Data Security

3.2.1 Duty to Protect University Data. Supplier shall provide evidence that it has implemented and maintains a documented information security program to protect and safeguard University Data. The program shall include administrative, technical, and physical safeguards that utilize commercially available industry best practices, and meet or exceed the University's security policies, procedures and requirements, and applicable state and federal laws and standards. Upon request, the provider shall provide additional documentation of the information security program.

3.2.2 Compliance with Personal Information Statutes. Supplier acknowledges that University Data may include personal information covered by various state personal information statutes. Supplier shall ensure that the storage, handling and transmission of the University Data complies with the existing and future federal and state laws (collectively, "**Personal Information Statutes**"), of all personally-identifiable University Data.

3.2.3 Notification of Suspected or Actual Breach. If Supplier believes that Data Protected by Law has been subject to unauthorized access, Supplier shall provide written notice to the University immediately and in any event within twenty-four (24) hours by sending e-mail to security@umich.edu. If the University determines that actions must be taken to comply with Personal Information Statutes, Supplier shall fully cooperate with the University to achieve such compliance and if compliance is required due to a breach by Supplier of this DPA. Supplier shall reimburse University for all costs and damages associated with such breach and compliance.

3.3 Protection of University Data. University Data shall not be accessed or used by Supplier to create aggregated or de-identified data unless to inform its Analytics Dashboard. Supplier will take all appropriate measures to ensure that third parties under its control do not access and modify University Data for purposes not contemplated by this Agreement.

- 3.4 **Notice and Approval of Offshoring.** Supplier represents and warrants to University that Supplier shall not: (a) perform any of its obligation under any Other Agreement from locations or using employees, contractors and/or agents, situated outside the United States, or (b) directly or indirectly (including through the use of subcontractors) transmit any University Data outside the United States, nor will Supplier allow any University Data to be accessed by Supplier employees, contractors and/or agents from locations outside the United States without notifying and gaining the written approval of the University.
- 3.5 **Return or Destruction of University Data.** At any time and upon University's written request, Supplier shall promptly return, within ten (10) business days, all originals and copies of University Data, whether in printed or electronic form, including any and all backups and archived data. In lieu of a return of University Data, with the University's written consent, Supplier shall promptly destroy all originals and copies of University Data, whether in printed or electronic form, including any and all backups and archived data in accordance with industry standards and the federal government's best practices.
- 3.6 **On-going Security Program Evaluation.** Upon the University's written request, Supplier shall provide documentation on the current state of its security program.
- 3.7 **General Data Protection Regulation.** The parties shall conform to Exhibit D with respect to the General Data Protection Regulation.

EXHIBIT D

GENERAL DATA PROTECTION REGULATION (GDPR) **ADDENDUM**

This Addendum (Addendum) governs all processing of personal data that is subject to the GDPR (as defined below) and necessary for the provision of services by Supplier to the University pursuant to the General Services Agreement (the “Agreement”). To the extent of any conflict between this Exhibit D and the terms of the Agreement or any other document or exhibit, this Exhibit D shall control with respect to personal data that is subject to the GDPR.

1. Definitions

1.1. For purposes of this Addendum:

- 1.1.1. the term “personal data” shall mean any information relating to an identified or identifiable natural person that is subject to the GDPR and is processed for or on behalf of the University;
- 1.1.2. the term “processing” shall mean any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction; and
- 1.1.3. The term “data subjects” shall mean any identified or identifiable natural person about or from whom data are collected as part of the Agreement or its Exhibits.

2. Scope

2.1. This Addendum is applicable to processing of personal data that falls under Regulation (EC) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the “Regulation” or the “GDPR”) and its applicable implementing laws and that is required to provide the services subject to the Agreement. .

2.2. In particular, the personal data that is subject to this Addendum is:

- 2.2.1. Identification data, academic data, usage data, communications, admissions data, and performance data

2.3. The personal data that is subject to this Addendum as referenced above is further related to the following categories of data subjects:

- 2.3.1. Students, faculty, staff, prospective students, guests, and volunteers.

2.4. Pursuant to the Agreement, personal data is processed by the Supplier on behalf of the University for the purpose(s) of:

- 2.4.1. University offering online courses and degrees, academic services, and recruiting and admissions.
- 2.5. Personal data shall be processed by Supplier on behalf of the University of Michigan for the term of the Agreement.

2. Roles

- 2.1. The University agrees that it is responsible for compliance as the data controller under the GDPR with respect to the processing defined in section 1.
- 2.2. Supplier agrees that it is responsible for compliance as the data processor under all applicable data protection laws with respect to the processing defined in section 1.

3. Processing Requirements

- 3.1. Supplier shall process personal data received from the University or collected or otherwise processed on behalf of the University only as provided in the Agreement or on documented written instructions from the University, including with regard to transfers of personal data to third countries and will not process that data in any other way or for any other purpose.
- 3.2. Supplier shall only process the personal data defined in paragraph 1 of this Addendum that are necessary for the provision of the service as described in the Agreement.

4. Security and Confidentiality

- 4.1. Supplier represents that it implements the appropriate technical and organizational measures to ensure a level of security appropriate to the risks for the rights and freedoms of persons, taking into account the nature of processing and the information made available to Supplier.
- 4.2. Supplier shall inform the University without undue delay, and in any event no more than 48 hours after having become aware, of any data breach concerning personal data that is processed on behalf of the University.
- 4.3. Supplier represents that the persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

5. Accountability

- 5.1. Where necessary, Supplier shall assist the University with conducting Data Protection Impact Assessments for the processing of personal data processed by Supplier on behalf of the University. To that end, Supplier shall make available to the University all information necessary to demonstrate compliance with the GDPR and shall allow for and contribute to audits conducted by the University or mandated by the University, where necessary. A request for audit, detailing the scope of the audit and the methods intended to be employed, will be sent to the Supplier at least 3 business days in advance of the planned audit. The University shall bear its own expenses in relation to any audits. Nothing in this Exhibit D

shall be deemed to require the disclosure to the University or anyone else of any trade secrets of Supplier or its subcontractors.

- 5.2. The parties acknowledge that Supplier shall use certain systems of the University for the processing of personal data. No provision of this Exhibit D will be applicable to Supplier to the extent that it would require Supplier to exercise any direction, oversight or control over the information technology systems owned or operated by the University or any of its personnel, affiliates or other contractors.

6. Rights of data subjects

- 6.1. The University is responsible to assess any requests from data subjects in the exercise of their rights granted by the GDPR and its applicable implementing laws, which are related to processing of personal data in the scope of this Addendum, and to provide a resolution to such requests; provided, however, that Supplier may make any notifications to data subjects and/or government authorities solely to the extent that Supplier reasonably determines such notices are required by applicable law and that the University has not already satisfied the requirement, provided that before doing so, Supplier will consult with the University, and the parties will coordinate their efforts.
- 6.2. Supplier shall promptly direct to the University all requests it may receive directly from data subjects in the exercise of their rights in relation to the processing subject to this Addendum.
- 6.3. Supplier shall assist the University by implementing appropriate technical and organizational measures, insofar as it is possible, for the fulfilment of University's obligations to inform the individuals about the details of the processing and to respond to requests for access, rectification, erasure, and portability of personal data as provided for by the GDPR and its implementing laws, as well as for requests to object to processing of such data.
- 6.4. If a data subject brings a claim directly against the University for damages suffered in relation to Supplier's breach of this Addendum or of the GDPR, Supplier will indemnify the University for any cost, charge, damages, expenses or loss arising from such a claim.

7. Sub-processor Obligations

- 7.1. The University authorizes Supplier to engage sub-processors as necessary for the performance of the Services. Supplier shall inform the University of the identity of and any intended changes concerning the addition or replacement of subcontractors having access to personal data processed on behalf of the University no less than two (2) weeks in advance of any intended change concerning sub-processors and shall only proceed with such change if no objection is raised by the University.
- 7.2. When Supplier engages a sub-contractor for carrying out processing activities on behalf of the University, the same data protection obligations set out in this Addendum shall be contractually imposed on that subcontractor, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the

processing will meet the requirements of the GDPR and its applicable implementing laws.

- 7.3. At the time of execution of the Agreement, Supplier had agreements with the following sub-processors that can potentially process personal data on behalf of the University:

7.3.1. INTENTIONALLY LEFT BLANK

8. Return or Destruction of University Data

- 8.1. Any rights Supplier may have to retain, use or process in any way whatsoever personal data shall immediately cease upon termination or expiration of the Agreement. All personal data (whether such data is processed or controlled by Supplier or any sub-processor) must be destroyed or returned to the University within 30 days of such termination or expiration. In addition, at any time and upon University's written request, Supplier shall promptly return, within thirty (30) days, all originals and copies of personal data, whether in printed or electronic form, including any and all backups and archived data. In lieu of a return of personal data, but only with the University's prior written consent, Supplier shall promptly destroy all originals and copies of personal data, whether in printed or electronic form and whether controlled by Supplier or any sub-processor, including any and all backups and archived data in accordance with industry standards and the federal government's best practices and certify the same in writing to University. Notwithstanding the foregoing, if applicable law requires continued storage of such personal data by Supplier, Supplier shall be allowed to keep one copy of such personal data to satisfy its requirements with such applicable law.

AGREEMENT FOR GENERAL SERVICES BETWEEN THE REGENTS OF THE UNIVERSITY OF MICHIGAN AND NOODLE PARTNERS, INC.

This AGREEMENT FOR SERVICES is made between **THE REGENTS OF THE UNIVERSITY OF MICHIGAN** (“University”), a Michigan Constitutional Corporation, Ann Arbor, Michigan, and **NOODLE PARTNERS, INC.** (“Supplier”). University and Suppliers are each a “party” or together “parties”.

The following terms and conditions shall be observed. Any Supplier terms and conditions included with Supplier’s invoice or any other document provided by Supplier shall be of no effect.

- 1.0 **Description of Services.** Supplier hereby agrees to provide Online Program Management Services, “Services” for services intended specifically for the University of Michigan—Ann Arbor School of Nursing defined in Exhibit A, and to comply with all “Specifications”, which may be included in the Services description at Exhibit A, and all terms under this Agreement. The University shall use reasonable efforts to direct applicable requests for such Services to Supplier under this Agreement., This Agreement does not confer on either party a right of exclusivity with respect to the Services provided to the University.
- 2.0 **Term.** The initial term of this Agreement will begin on **9/10/2019** and end on **9/9/2022** or the conclusion of any Wind down Period, whichever occurs later. At the end of the initial term, this Agreement will be evaluated. If the parties agree that it is a mutually beneficial relationship, the Agreement may be extended in writing for up to two (2) additional years.
- 3.0 **Performance Standard.** Supplier agrees to perform the Services described in this Agreement to the reasonable satisfaction of the University and with the standard of care and skill of an expert regularly rendering Services of the type required by this Agreement, and in conformance with all applicable federal, state, local and University law, regulation, ordinance and license as well as this Agreement. Supplier’s performance of the Services shall include the performance of any third-party Supplier engages to deliver Services under this Agreement (each a “Subcontractor” and collectively the “Subcontractors”).
- 4.0 **Warranties and Representations.** Both Parties acknowledge that each Party is relying on these representations and warranties as essential elements to this Agreement, representing as they do, material inducements, without which either Party would not have entered into this Agreement.
 - 4.1 **General Services Warranty.** Supplier warrants that all Services provided shall conform to the level of quality performed by experts regularly rendering this type of Service. Supplier warrants for ninety (90) days after accepted completion of a requested Service that its Services are fully satisfactory to the University and will repair, replace or redo at no additional cost to the University any unsatisfactory Services. For sake of clarity this General Services Warranty shall extend from Supplier to any work performed pursuant to this Agreement by any Subcontractor.

4.2 **Cooperation**. University represents and warrants that it will provide an appropriate and reasonable level of cooperation with Supplier and the Subcontractors on matters necessary to effectuate the terms of this Agreement and attendant SOWs

4.3 **Qualifications**. Supplier warrants that it, as well as its employees, agents and subcontractors engaged to provide items or Services under this Agreement (collectively “Supplier Personnel”), has and will maintain all the skills, experience, and qualifications necessary to provide the Services contemplated by this Agreement, including any required training, registration, certification or licensure.

The required qualifications, by way of example only and without limitation, shall expressly include (a) all qualifications identified in Exhibit A.

4.4 **Supervision of Subcontractors**. Supplier warrants that it will employ reasonable commercial efforts to ensure that its Subcontractors do not act in ways that would violate the terms of this Agreement if Supplier acted in a similar way. Supplier will notify University should it become aware of acts or conditions of a Subcontractor that would violate the terms of the Agreement if such acts or conditions were those of the Supplier.

4.5 **Conflict of Interest**. The Parties warrant that to the best of their knowledge, there exists no actual or potential conflicts of interest that would impact or interfere with the respective obligations of the Parties under this Agreement and that the Parties will inform each other if it becomes aware of any actual or potential conflicts of interest.

For the avoidance of doubt, the University acknowledges that Supplier is and will be working with other postsecondary institutions to provide similar services under separate agreements. Supplier acknowledges that University is and will be working with other vendors to provide similar services under separate agreements.

4.6 **Nondiscrimination**. The Parties warrant that they are equal opportunity employers and that, during the performance of this Agreement, they will comply with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976.

4.7 **Good Standing**. The Parties warrant that they are legally organized entities in good standing under the laws of the state of their organization and, where required, in good standing under the laws of the State of Michigan and that the persons executing this Agreement on behalf of such Party has been duly authorized and empowered by all necessary corporate actions to execute this Agreement.

4.8 **Noninfringement**. Supplier warrants that the Supplier’s Services and/or the University’s use of products, processes, techniques and methodologies provided by Supplier or developed by Supplier shall not infringe upon the

intellectual property rights or other proprietary rights of others. University warrants that Supplier's use of University's products, processes, techniques and methodologies provided by University or developed by University shall not infringe upon the intellectual property rights or other proprietary rights of others.

- 4.9 Not Excluded. Supplier warrants that neither Supplier, nor, to the best of Supplier's knowledge, Supplier Personnel and/or any of its Principals; is excluded from participating in the Medicare or Medicaid program nor currently debarred, suspended, proposed for debarment, declared ineligible for the award of contracts by any U.S. Federal agency or listed in the U.S. Government System for Award Management (SAM) (www.SAM.gov) in accordance with Executive Orders 12549 and 12689, "*Debarment and Suspension.*" Supplier shall immediately notify the University if it or Supplier Personnel and/or any of its Principals becomes debarred or suspended during the term of this Agreement.

Supplier further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Supplier or its affiliates, or to the best of its knowledge, against any Supplier Personnel. Supplier agrees that it shall not perform any act that shall cause Supplier to be excluded from a federal health care program or debarred, suspended or listed in the U.S. Government System for Award Management (SAM) as excluded from participating in Federal Procurement or Nonprocurement Programs during the term of this Agreement.

"Principals" for the purposes of this certification, means officers; directors; owners; partners; principal investigators; and persons having primary management or supervisory responsibilities with a business entity (e.g., general manager; plant manager; head of a subsidiary, division or business segment, and similar positions).

- 5.0 Financial Arrangement. The detailed financial arrangement is in Exhibit B.

- 6.0 Termination.

- 6.1 Termination for Breach. Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided the breach continues for thirty (30) calendar days ("Cure Period") after receipt by the breaching party of written notice of the breach from the non-breaching party. Cure of the breach within the Cure Period shall continue the Agreement in full force and effect, provided however three (3) breaches of a material provision are an independent material breach not subject to cure.

The Parties acknowledge that, in certain cases, it is possible that a Party may cure a breach but that the impact of the cure may take longer than thirty (30) days to notice. Supplier acknowledges that University may always terminate this Agreement after the Cure Period if, in its reasonable assessment, it must

do so in order to maintain the reputation of the University as a world class educational institution.

- 6.2 **Immediate Termination**. The University shall have the right to terminate this Agreement immediately upon notice to Supplier should any of the following situations occur:
- 6.2.1 Supplier or Supplier Personnel do anything or have done anything to harm the business reputation of the University, including, without limitation, assignments pursuant to Section 16.4.;
 - 6.2.2 Supplier or any Supplier Personnel is excluded from a federal health care program;
 - 6.2.3 If any warranty or representation of the Supplier in this Agreement is or becomes false or untrue that the Supplier knew or should have known was or become false or untrue;
 - 6.2.4 A person's health or safety is or may be in imminent and serious danger due to the actions or inaction of Supplier or Supplier Personnel;
 - 6.2.5 There may be imminent and serious harm to the environment or the University property from Supplier's acts or inactions or those of Supplier Personnel; or
 - 6.2.6 The University reasonably determines Supplier has violated a law in providing the Services.
- 6.3 **Effect of Termination**. Upon notice of termination for any reason under this Agreement, Supplier shall cease all activity at the conclusion of the Wind Down Period (see Section 6.5). Supplier has sixty (60) days from the date of conclusion of the Wind Down Period to submit final invoices for final reasonably satisfactory Services up to the point of conclusion of the Wind Down Period under this Agreement. University will have no obligation to assist in billing issues or issue payment under the terms of this Agreement for invoices submitted after the sixty (60) day period.
- 6.4 **Change in Law**. If, subsequent to the execution of this Agreement, it is determined by either party's legal counsel that this Agreement or any of its provisions may violate or does violate any law, rule, or regulation, the parties agree to renegotiate the provision(s) so that it (they), as well as this entire Agreement, complies with the law, rule or regulation. If the parties are unable to come to an agreement within thirty (30) calendar days, either party may, without further notice, immediately terminate this Agreement.
- 6.5 **Wind Down Period**. In the event of expiry or termination of this Agreement, the Parties agree that, as long as such extension is permitted by law, the terms of this Agreement will be extended so that the then-current students will be given the opportunity to complete the applicable Program during the period described in this Section (the "Wind Down Period"). The Wind Down Period will commence on the effective date of expiry or termination and continue for a period no less than the time necessary for then-current students to complete their applicable Programs. The Parties may extend the Wind Down Period further than required herein upon mutual written agreement. During the

Wind Down Period, no new students will be added to the applicable Programs and marketing for the applicable Programs will cease. All other obligations of the Parties under this Agreement required to ensure that then-current students receive the same quality of service from the Parties during the Wind Down Period as prior to expiry or termination shall survive during the Wind Down Period, including but not limited to the following: (a) Supplier shall ensure that quality and effectiveness of the services during the Wind Down Period are not diminished from the quality and effectiveness that Supplier was required to provide previously and (b) University shall continue to pay for Supplier Services pursuant to the terms of the Agreement. The obligations of the Wind Down Period shall cease in the event all students have completed or withdrawn from the applicable Programs.

- 7.0 Compliance with Laws, Policies & Procedures. Supplier is advised that the University has established a compliance program to assure compliance with applicable laws and University policies designed to prevent and detect fraud, waste, and abuse. To the extent applicable to the Services, Supplier shall fully comply with all federal, state, local, and University laws, rules, regulations, ordinances, policies and licenses, including applicable building policies and procedures, the University's Ordinances (reference website <http://www.umich.edu/~regents/ordinance.html>) and any standards of the Centers for Medicare and Medicaid Services ("CMS"), Michigan Department of Community Health ("MDCH") and The Joint Commission , all as may be amended from time to time. Supplier acknowledges that Information about (1) the UMHS Compliance Program, (2) UMHS policies and procedures, (3) federal and state false claims and false statements laws, as well as (4) information about whistleblower protection under these laws, is available at <http://www.med.umich.edu/vendors/>. Supplier agrees to further disseminate information about applicable University policies, as necessary, to ensure that all Supplier Personnel and Subcontractors, as applicable, involved in performing the Services are aware of the existence and location of applicable University policies as well as how and where to make reports to the University regarding any compliance concerns. To the extent that University policies provide for reviews or audits of claims or services arising from this Agreement, Supplier agrees to participate in such audit insofar as it is relevant and applicable to Supplier and Supplier Personnel's interaction with University. If Supplier identifies potential non-compliance with any applicable laws, regulations or policies in connection with the provision of the Services, Supplier shall promptly contact the University of Michigan Compliance Hotline at 866-990-0111 and provide details concerning the suspected wrongdoing sufficient to facilitate an investigation by University.

Supplier shall be solely responsible for insuring that any recommendations made in connection with the Services comply with all applicable federal, state, local and University laws, rules, regulations, policies and procedures. Unless otherwise expressly provided for in this Agreement, Supplier shall obtain and comply with all permits, licenses and similar authorizations that are necessary to provide the Services. By executing this Agreement, Supplier warrants and represents that it has all legally required licenses and permits needed to perform the Services.

8.0 Patents, Copyright, Data and Documents.

- 8.1 Whenever any invention or discovery is made or conceived by Supplier, and such invention or discovery is or is part of a product or service that University commissioned Supplier to provide to University under this Agreement, (“Supplier Invention”), Supplier shall furnish to the University, within thirty (30) days of the creation or conception, the complete information with respect to such Supplier Invention and the University shall have the sole power to determine whether and where a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent that may result. In addition, whenever any invention or discovery is made or conceived by any Subcontractor in the course of or in connection with this Agreement, and such invention or discovery is or is part of commissioned Supplier to provide under this Agreement or Supplier contracted Subcontractor to provide to University, (“Subcontractor Invention”), Supplier shall furnish, or ensure that the applicable Subcontractor furnish, to the University, within thirty (30) days of the creation or conception, the complete information with respect to such Subcontractor Invention and the University shall have the sole power to determine whether and where a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent that may result. Supplier shall ensure, at the University’s expense, the applicable Subcontractor execute (or cause to be executed) all documents and do (or cause to be done) all things necessary or proper with respect to such patent application, including causing Subcontractor Personnel to do the same. For the avoidance of doubt, improvements invented solely by Supplier Personnel that Supplier makes on its own technology and services and to publicly available technology shall not be the subject of patent applications by the University or subject to any proprietary claim by University. Similarly, improvements invented solely by Subcontractor Personnel that any Subcontractor makes on its own technology and services and to publicly available technology shall not be the subject of patent applications by the University or subject to any proprietary claim by University.

Supplier grants University, and shall cause all Subcontractors to grant University, a non-exclusive, royalty-free, non-assignable license to use any Supplier Invention or Subcontractor Invention both during the Term of this Agreement and after termination of this Agreement in perpetuity.

- 8.2 All materials conceived or prepared by Supplier under this Agreement, including but not limited to any and all notes, designs, drawings, memoranda, reports, computer programs and code (including supporting data), and the technical data, if any, furnished by Supplier pursuant to this Agreement (“Work Product”) shall be the property of the University. All Work Product shall be delivered to the University upon demand, and the University shall have the right to use Work Product for any purpose that it may deem desirable without the necessity of further compensating Supplier or any other person or persons for their use. In addition Supplier shall ensure any materials conceived or prepared by any Subcontractor under this Agreement, including but not limited to any and all notes, designs, drawings, memoranda, reports, computer programs and

code (including supporting data), and the technical data, if any, furnished by any Subcontractor pursuant to this Agreement or developed by the Supplier in connection with the performance of Services (“Subcontractor Work Product”) shall be the property of the University via written agreement between Supplier and the Subcontractor.

For the avoidance of doubt, Work Product and Subcontractor Work Product constitutes only those materials generated as a direct result of and necessary to the specific services University commissioned Supplier to perform under this Agreement or that Supplier contracted Subcontractor to perform for University. Supplier and Subcontractor are entitled to full ownership of any materials they generate that do not directly reflect the work University commissioned Supplier or that Supplier contracted Subcontractor to perform.

Supplier hereby grants to the University all rights, title and interest in and to all Work Product, and Supplier agrees that Work Product shall be considered “works made for hire” made exclusively for the University under U.S. copyright laws. Upon University’s request, Supplier shall execute all documents and do all things necessary or proper to give full effect to the provisions of this section. In the event any Work Product shall not be a work for hire under the U.S. copyright laws, Supplier and Supplier Personnel hereby assign to the University all rights, title and interest in the work and agree to execute whatever assignment of copyright and ancillary and confirmatory documents as may be required or appropriate to transfer exclusive title in the Work Product and any copyright in it to the University.

In addition, Supplier shall ensure any and all Subcontractors grant to the University all rights, title and interest in and to all Subcontractor Work Product, and Supplier shall ensure that all Subcontractors agree that Subcontractor Work Product shall be considered “works made for hire” made exclusively for the University under U.S. copyright laws. Supplier shall ensure any and all Subcontractors execute all documents and do all things necessary or proper to give full effect to the provisions of this section. In the event any Subcontractor Work Product shall not be a work for hire under the U.S. copyright laws, Supplier shall ensure that the applicable Subcontractor and Subcontractor Personnel hereby assign to the University all rights, title and interest in the work and agree to execute whatever assignment of copyright and ancillary and confirmatory documents as may be required or appropriate to transfer exclusive title in the Subcontractor Work Product and any copyright in it to the University.

For the avoidance of doubt, ownership of Supplier’s or Subcontractor’s computer programs; technical data unrelated to University’s programs, courses, students, and staff; and its previously created works, inventions, and the like will not be transferred to the University. Supplier does, however, and will cause all Subcontractors to, grant to the University, its personnel, its students, alumni, and prospective students a license, during the term of this Agreement or any separate agreement with a Subcontractor, to use the materials described in the previous sentence as consistent with the intentions and services in this Agreement.

- 8.3 All data created under this Agreement and/or in the performance of this Agreement by Supplier and/or its Subcontractors shall be considered University data and shall belong to the University. Supplier and its Subcontractors shall make any and all University data available to University in a timely manner at the termination or expiry of this Agreement or at the conclusion of the Wind Down Period, as applicable.
- 9.0 Insurance Coverage and Levels. Unless more specific insurance provisions are attached, Supplier shall, at Supplier's expense, obtain and maintain the following coverages:
- 9.1 Commercial general liability insurance, including contractual products and completed operations insurance (\$1 million per occurrence/\$3 million annual aggregate).
 - 9.2 Professional Liability/Errors and Omissions Insurance with limits not less than \$1 million per occurrence and \$2 million annual aggregate if the activity is deemed professional in nature or performed by someone with a professional designation and is excluded from the Commercial General Liability Insurance.
 - 9.3 Worker's Compensation at statutory limits in accordance with the appropriate State of jurisdiction including Employer's liability (with minimum \$500,000). Automobile liability for owned, non-owned and hired vehicles minimum limit (\$1 million each accident).
 - 9.4 Supplier agrees to have the Regents of the University of Michigan added as an additional insured with respect to Commercial General Liability Insurance for purposes of contract performance and any personal or property damages arising out of Agreement.
 - 9.5 Supplier agrees to provide the University with thirty (30) days prior written notice of any reduction in limits or cancellation of any of the above insurance.
 - 9.6 If any of the required insurance is on a "claims made" basis and is cancelled during the term of this agreement, Supplier agrees to purchase **tail coverage** or **prior acts coverage** so that such insurance is in effect from the date the Agreement is executed to three (3) years after its termination.
 - 9.7 Supplier shall provide the University with a certificate of the above insurance coverages and amounts. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Supplier of its liabilities and obligations under this Agreement.
- 10.0 Indemnity. Each party shall defend, indemnify and hold harmless the other party, its board members, officers, employees, agents and students (if the University) from and against any costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney fees, which may arise out of the indemnifying party's acts or omissions under this Agreement for which the

indemnifying party would be liable in law or equity.

The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the other party, at its expense, to participate in the defense or settlement of the claim. When a claim is resolved by the indemnifying party's payment of money, it shall have final authority regarding defense and settlement. When a claim resolution requires equitable relief against the non-indemnifying party or the indemnifying party has not or will not pay the money required for resolution, the parties shall cooperate regarding defense and settlement.

- 11.0 Audit. The parties are responsible for keeping accurate and reasonable records related to their performance and obligations under this Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement. The parties agree that each party or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. Each party shall make available to the other party or its agents all such records and documents for audit on the party's premises during regular and reasonable working hours within ten (10) business days of a written request for availability. Each party agrees to either (a) allow the other party to make and retain copies of those documents useful for documenting the audit activity and results or (b) sequester the original or copies of those documents the party identifies for later access by the party. The parties further agree to disclose within ninety (90) days of receipt any independent auditors' reports, which bear directly on the performance or administration of this Agreement.

The right to audit shall include, upon thirty (30) days notice, periodic examinations of records throughout the term of the Agreement and for a period of three (3) years after its termination. The right to audit shall also include Supplier's reasonable efforts to grant similar access to records of agents and subcontractors hired by the Supplier for the purpose of fulfilling the Agreement. In the event that audits discover substantive findings related to fraud, misrepresentation or non-performance, the party may recoup the costs of the audit work from the other party.

12.0 Confidentiality.

- 12.1 Each party shall keep confidential and not disclose to third parties any information developed or created under this Agreement or provided by a party or by private individuals (including students, faculty, staff, prospective students, among others), organizations or public agencies pursuant to this Agreement, including protected financial information under Gramm- Leach-Bliley Act, unless a party has received the prior written consent of the other party to make the disclosure or unless required by law or legal process. Only Supplier Personnel with a need to know may have access to or use University information and only University personnel with a need to know may have access to Supplier information. For the avoidance of doubt, the University is subject to the Michigan Freedom of Information Act, which, when applicable, requires disclosure by law or legal process.

- 12.2 This obligation of confidentiality does not extend to information that is or shall become through no fault of either party available to the general public.
 - 12.3 Each party shall protect and not disclose all confidential information provided to it by the other party in the course of this Agreement in a manner similar to which it would protect its own confidential information.
- 13.0 Removal of Supplier Personnel. All Supplier Personnel shall have a background appropriate for the location and the type of work to be performed by the individual, including without limitation any disqualifying criminal background. If the University becomes aware that Supplier or any Supplier employee, agent or contractor (collectively “Supplier Personnel”) (a) does not have the background appropriate for the location and type of work to be performed by the individual, or (b) repeatedly fails, in the University’s sole discretion, to perform in a competent manner, the Supplier Personnel shall no longer be acceptable to the University. Under either circumstance, after the University notifies Supplier in writing citing the grounds and specific supporting facts, Supplier shall no longer schedule the Supplier Personnel to provide or support Services for the University under this Agreement or any other Agreement with the University. The University, in its sole discretion, may modify this prohibition upon presentation in writing by Supplier of adequate reasons and facts for modifying the prohibition.

If Supplier learns during the term of this Agreement of any lapse in qualifications of any of the Supplier Personnel to meet the warranted qualifications it must immediately remove the affected personnel whose qualifications have lapsed and inform the University of the date when the affected personnel was no longer qualified to provide the Services being performed by them.

14.0 Operational Matters.

- 14.1 On-site Supplier Personnel shall follow and adhere to the University policies and procedures applicable to the provision of the Services including, by way of example only and without limitation (a) sign-in procedures, (b) identification badges, (c) executing confidentiality statements, (d) participation in any required training, parking regulations.
- 14.2 Except as otherwise expressly provided in this Agreement, or agreed to by University in advance in a mutually agreed upon budget, Supplier shall be responsible for payment of all business expenses incurred while providing the Services.
- 14.3 Supplier agrees to provide a separate statement of work (SOW or “Statement of Work”) for each Subcontractor prior to that Subcontractor commencing any work under this Agreement or Supplier providing any Services directly as described in Exhibit A. Each SOW will contain a description of the Services provided, who will provide the Services, key milestones related to the Services, and all fees associated with the Services. Each SOW must be approved by the requesting University department in writing prior to any billable work beginning.

- 14.4 Supplier agrees to timely cooperate and assist with any applicable performance improvement and quality assurance activities of the University as they may relate to the Services.
- 14.5 Supplier Cooperation. Supplier shall cooperate and make adjustments as necessary in the methods and timing for provision of Services under this Agreement so that other Suppliers and University personnel can perform their independent obligations to the University.
- 14.6 Limitation on Supplier Personnel. Supplier agrees that unless otherwise approved by the University in writing in advance, no Supplier Personnel who would fall within categories a, b, or c, below, shall provide services if any of the following have occurred: (a) any *applicable* registration, certification, licensure (including where applicable, Medicare/Medicaid provider status) of Supplier Personnel, in any state, is or has been threatened with limitation, suspension, revocation or exclusion; (b) any *applicable* registering, certifying, or licensing board reprimands, sanctions or otherwise disciplines Supplier Personnel; or (c) a negligence or malpractice claim related to the provision of the Services or similar services has been asserted against Supplier Personnel.
- 14.7 Access to Books and Records. The parties agree that if this Agreement is subject to the Medicare statutes and regulations governing access to books and records of subcontractors (Section 952 of the Medicare and Medicaid provisions of the Omnibus Reconciliation Act of 1980, which amends section 1861(V) (1) of the Social Security Act), Supplier shall retain and, for four (4) years after Services are furnished by Supplier, shall allow the authorized representatives of the Comptroller General, the University, and the Department of Health and Human Services access to this Agreement and to the books, records, and other documents of Supplier that are necessary to verify the nature and extent of the costs of the Services. In the event Supplier receives a request for access, Supplier agrees to notify the University immediately and to consult with the University regarding what response will be made to the request. This Agreement to provide access shall continue for four (4) years after the Services are terminated.
- If Supplier carries out any responsibilities under this Agreement through the use of a Subcontractor, including any organization related by ownership or control with Supplier, when the subcontract is worth or costs \$10,000 or more over a twelve (12) month period, Supplier shall obtain and forward to the University the Subcontractor's written promise to be bound as Supplier is under this same access Agreement.
- 15.0 Duties of the University. Except as otherwise expressly provided in this Agreement, the University will furnish Supplier with the space, facilities, and accommodations the University deems reasonably necessary to support Supplier in the provision of the Services contemplated by this Agreement.

16.0 Miscellaneous.

- 16.1 Use of the University Name and Marks. The University acknowledges Supplier's right to make, without the consent of the University, public statements regarding the existence of the contract and its terms and conditions to accurately identify the products or services being supplied. However, except as permitted by the previous sentence, Supplier may not, without the prior written consent of the University's Office of Global Communications, make any public statement (for example through a press release or any form of advertisement) characterizing the University's relationship with Supplier or implying or stating the University's endorsement of Supplier or Supplier's product or services. The University may withhold its consent in its absolute discretion. Supplier acknowledges that the University will require ten (10) business days to consider any request for consent. Notwithstanding the foregoing, Supplier and its Subcontractors may use University marks provided by the University solely in connection with Supplier's responsibilities and obligations under this Agreement. In all cases, Supplier or its personnel will not use or will refrain from using University marks over the University's objection.
- 16.2 Use of Premises or the University Property. Supplier shall neither use nor allow Supplier Personnel to use any part of the University premises or property for any purpose other than the performance of the Services under this Agreement. Without limiting the generality of the statement above, Supplier shall not use the University in any manner that might jeopardize the Medicare provider status of the University or the tax exemptions or casualty insurance of the University.
- 16.3 Independent Contractor Status of Parties. It is expressly understood that Supplier is an independent contractor and not the agent, partner, or employee of the University. Supplier and Supplier Personnel are not employees of the University and are not entitled to tax withholding, Worker's Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Supplier shall not have any authority to enter into any contract or agreement to bind the University and shall not represent to anyone that Supplier has such authority.
- 16.4 Assignment. Neither party may subcontract, assign, or transfer this Agreement or any interest or claim under this Agreement without prior written approval of the other party, which shall not be unreasonably withheld. Notwithstanding any consent by a party to any assignment, the other party shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirements, in writing, by the consenting party. The Supplier shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

Notwithstanding the foregoing, the Supplier may assign this Agreement, with sixty (60) days' notice to University, to an acquirer of Supplier or of substantially all of Supplier's assets, without the prior written consent of

University, unless the University has good and reasonable cause to object to such assignment, and submits such objection within one (1) calendar month of receiving such notice of assignment.

- 16.5 **Notices**. Any notice to either party must be in writing, specifically reference this Agreement and signed by the party giving it. Service upon the University shall be addressed to: Procurement Services, 7071 Wolverine Tower, 3003 S. State Street, Ann Arbor, Michigan, 48109-1282 USA. Service upon the Supplier shall be served to the address indicated on this Agreement for Supplier (or to such other address as may be later designated by written notice). Notice shall be by personal delivery, recognized overnight courier service, or by the United States mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices shall be effective when received, but in no event later than three (3) days after being placed in the hands of the United States Post Office or private courier service.
- 16.6 **Entire Agreement, Amendment**. This Agreement and its Exhibits (including Exhibits A, B, C, D and any additional Statements of Work) constitute the entire understanding between the parties with respect to the subject matter and may not be amended except by an agreement signed by Supplier and an authorized representative of the University. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties.
- 16.7 **Severability**. The terms of this Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- 16.8 **Governing Law, Construction and Venue**. This Agreement shall be governed by and construed under the laws of the State of Michigan without regard for principles of choice of law. Any claims, demands, or actions asserted against the University shall be brought in the Michigan Court of Claims. Supplier, its successors and assigns, consent to the jurisdiction of a court with applicable subject matter jurisdiction sitting in the state of Michigan with respect to any claims arising under this Agreement.
- 16.9 **Headings**. The paragraph headings in this Agreement are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.
- 16.10 **Waiver**. No delay or omission by either party to exercise any right or remedy under this Agreement shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
- 16.11 **Survivability**. Provisions surviving termination or expiration of this Agreement are those which on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, confidentiality, warranty and choice of law and venue.

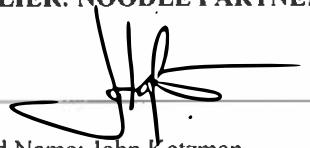
- 16.12 **Execution.** This Agreement may be executed in duplicate, each of which when executed and delivered shall be an original. The parties acknowledge and agree that this Agreement has been mutually discussed, negotiated, and drafted by the parties.
- 16.13 **No Third Party Rights.** Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.
- 16.14 **Force Majeure.** Neither Supplier nor the University shall be liable for failure to perform its respective obligations under the Agreement, except nonperformance of payment for obligations already incurred, when failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, or like causes beyond the reasonable control of the party (“Force Majeure Event”). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall: (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible, including, as applicable, abiding by the disaster plan in place for the University. In the event that any Force Majeure Event delays a party’s performance with respect to a material aspect of its obligations hereunder for more than forty-five (45) calendar days following notice by the delaying party, the other party may terminate this Agreement immediately upon written notice.
- 16.15 **Tax Exempt Status.** Supplier acknowledges that the University is a tax-exempt institution, granted such status by authorized taxing units of State of Michigan, and is exempt from Federal Excise Tax and Michigan General Sales Tax (see Michigan Public Act 167 of 1933. Section 4 as amended).
- 16.16 **Dispute Resolution.** Supplier and the University will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary.
- 16.17 **Freedom of Information Act.** Nothing in this Agreement shall in any way limit the ability of the University to comply with any laws or legal process concerning disclosures by public bodies. The parties acknowledge that any responses, materials, correspondence or documents provided to the University are subject to the State of Michigan Freedom of Information Act (“Act”) and may be released to third parties in compliance with that Act or any other law will not constitute a breach or threatened breach of this Agreement.
- 16.18 **Supplier Damage to the University Property.** Without regard to any other section of the Agreement, Supplier shall be responsible for the costs to return to “as was” condition from any damage caused to the building, grounds, or other equipment and furnishings caused in whole or part by Supplier Personnel while performing activities arising under this Agreement. Supplier

shall immediately report in writing the occurrence of any damage to the Building/Project Manager.

- 16.19 **Supplier Clean-up.** Supplier will remove all packing materials, rubbish and dirt from the University premises associated with Supplier's provision of Services under this Agreement.
- 17.0 **Confidentiality of Health Information.** The parties agree that Supplier's provision of the Services under this Agreement does not qualify Supplier as a "Business Associate" of the University as defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996. (which act and regulations as amended, restated and superseded from time to time are collectively referred to as "HIPAA"). Supplier will take all necessary steps to ensure Supplier Personnel do not seek or obtain access to protected health information created, maintained, or received by the University. In the event the scope of Supplier's Services changes or HIPAA changes (including governmental guidance offered on HIPAA) such that the University concludes the Agreement must be amended or further documents executed to ensure the University's compliance with HIPAA, the parties agree to promptly take all actions necessary to ensure the University compliance with HIPAA.

This Agreement becomes binding when signed by both parties.

SUPPLIER: NOODLE PARTNERS, INC.

By: 

Printed Name: John Katzman

Title: Chief Executive Officer

Date of Signature: 9/11/2019

**FOR THE REGENTS OF THE
UNIVERSITY OF MICHIGAN:**

By: 

Printed Name: Ted Eisenhut

Title: Procurement Manager

Date of Signature: 9/10/2019

EXHIBIT A
SCOPE OF SERVICES
General Services

1.0 Scope of Services to be Provided.

- 1.1 Program Services Advisor. For each Program, Supplier will act as a “Program Services Advisor,” in connection with which Supplier will (a) oversee all Subcontractor Services to ensure the Services are performed in accordance with the agreed upon terms and the high standards which University and Supplier strive to meet, and (b) advise University using its in-depth experience and strategic knowledge to assist University in creating a state-of-the-art online program (“Program”).
- 1.2 Catalog of Services. The parties expect that each Program will have unique needs. The following items describe service areas relevant to online degree programs. All items described in Section 1.2 shall be considered Services as defined in this Agreement, whether provided by Supplier or a Subcontractor. University can choose, in its sole discretion, to offer these services internally, or to have Supplier hire and manage Subcontractors to provide these services. To the extent that Supplier or Subcontractor provide Services, Supplier will ensure that all Subcontractors providing Services will be available to provide technical support as necessary and agreed to by University, or will instead provide that technical support of Subcontractor-provided Services directly.
 - 1.2.1 Marketing. Supplier and its Subcontractors can support a Program in conducting market research, and formulating and executing against a marketing strategy to attract students into the Program. Marketing services may include, but are not limited to, market research, branding, search engine optimization, microsites, strategic partnerships, public relations, and communications.
 - 1.2.2 Recruitment. Supplier can work with University to train the relevant Subcontractor on the Program and ensure that the Program is receiving complete applications for review as outlined in the admissions’ requirements for the Program. Supplier represents and warrants, here, that it (and its Subcontractors) and its (and their) employees, consultants, and agents shall perform their obligations under this Agreement in compliance with the Department of Education incentive compensation regulation, C.F.R. 668.14(b)(22), and the related Dear Colleague Letter issued March 17, 2011 (“Implementation of Program Integrity Regulations”) and it and its Subcontractors do not and will not pay employees incentive compensation based on their activities under this Agreement. In addition, Supplier asserts that it and its Subcontractors are separate and unaffiliated entities from University, with no decision-making

authority on behalf of University. For the sake of clarity, Supplier acknowledges that it its Subcontractors have no authority whatsoever to determine enrollment, admission, or financial aid in University degree or certification programs. Supplier acknowledges that any compensation by Supplier of its employees, agents, or contractors who perform any activities for the University under this Agreement that does not comply with Section 487(a)(20) of the Higher Education Act of 1965, as amended (20 U.S.C. § 1094(a)(20)), or any successor provision, or the regulations promulgated thereunder by the U.S. Department of Education is prohibited.

- 1.2.3 **Instructional Design & Media Production**. Supplier and its Subcontractors can, solely at University's request, support a Program's instructional design efforts by working with the Program's instructional designers, faculty, and staff to create and periodically update any curricular and co-curricular materials or activities for the Program. Supplier and the relevant Subcontractors, at the request of University, can provide advice on best practices for online learning and how to design curricular and co-curricular components for the Program.
- 1.2.4 **Events and Student Groups**. Supplier and its Subcontractors can, solely at University's request, support a Program in developing a plan for integrating students into both small and large-scale campus events (e.g., lectures, panel discussions, graduation activities), and for identifying pathways for connecting existing student groups in the Program and/or creating new opportunities for student groups in the Program.
- 1.2.5 **Immersions**. Supplier and its Subcontractors can, solely at University's request, assist faculty and staff in developing immersion experiences, and meet the curricular and co-curricular goals of the Program. Supplier can also support faculty and staff through hiring and managing Subcontractors to help with the planning and implementation of the immersion programs. This can include, but is not limited to, managing immersion student attendance and communications, arranging accommodations, and coordinating meals and social outings.
- 1.2.6 **Student Advising Support**. Supplier and its Subcontractors can, solely at University's request, provide student advising support. Student advising support can include, but is not limited to: answering questions about program requirements; registration processes; the academic calendar; add/drop deadlines, processes and procedures for registering a disability; and how to access wellness services.

- 1.2.7 **Student Success Support**. Supplier and its Subcontractors can, solely at University's request, provide student success support. Student success support can include, but is not limited to: providing students access to advisors and/or creating content and programming that addresses: planning for success and goal setting; troubleshooting potential obstacles for success; time management; and support through personal challenges (including referrals to University resources). Supplier and its Subcontractors can also provide the Program with patterns of at-risk behavior identified through interactions with students and/or through retention data from the Analytics Dashboard.
- 1.2.8 **Student Academic Support**. Supplier and its Subcontractors can, solely at University's request, provide student academic support. Student academic support can include, but is not limited to, developing instructional videos and/or other resources (e.g., a tutoring platform), as well as synchronous tutoring and writing support to assist in students' academic success.
- 1.2.9 **Practicum Placement**. Supplier and its Subcontractors can, solely at University's request, assist the Program with the placement of students into a practicum, where they will achieve the practical experience they need to complete their degree.
- 1.2.10 **Career Services**. Supplier and its Subcontractors can, solely at University's request, support a Program in the development of career services resources and programming for students in the Program. This may include, but is not limited to, creating videos and/or other resources, and working with Program staff to translate in-person programming to an online environment.
- 1.2.11 **Learning Stack/Tools**. Supplier and its Subcontractors can, solely at University's request, integrate with University's existing systems to build an integrated learning stack, including the Learning Management System, synchronous video, plagiarism review, online proctoring, video management services, synchronous chat tools and other required tools, subject to University's approval.
- 1.2.12 **Technology Integration**. Supplier and its Subcontractors can, solely at University's request, work with University to ensure the integration of Supplier's or Subcontractors' technologies and services with University's technologies and services. The goal is to deliver a cohesive and successful Program. The University has the option to employ any aspect of Supplier's technology platform, including but not limited to, marketing, recruiting, and the learning stack. The delivery of the Program will run on this platform, side by side with the normal University technology stack. It is the intent of the Parties that this stack, which Supplier will improve on an

ongoing basis, will act as a sandbox for new technologies that may be useful to the University campus overall.

- 1.2.13 **Technical Support**. Supplier can, solely at University's request, support faculty, staff, and students through hiring and managing Subcontractors to provide technical support. Technical support can include, but is not limited to: LMS functional support; video-conferencing support (e.g., Zoom); username assistance; video and/or audio troubleshooting; and general tech questions relevant to the online learning environment.
- 1.2.14 **Analytics Dashboard**. Supplier will, solely at University's request, provide University access to information in the form of reports that benchmark data including, but not limited to: marketing performance; website analytics; student academic engagement and performance; and student co-curricular engagement related to the Program. The reports will display data for all services for which Supplier has access to the relevant systems. Benchmarks will be established in consultation with the Program for courses and user engagement. Data shown on the reports will be updated daily. Supplier will employ what it considers to be generally accepted "best practices" in the collection and use of University's data, but in all cases will comply with University's data governance policies.

1.3 **Obligations of University**

- 1.3.1 **University Responsibility Generally**: University shall be exclusively responsible for (i) creating and exercising ultimate authority over all its degrees, courses, content, and curricula; (ii) providing instruction to enrolled students; and (iii) setting admissions, financial aid, graduation, and academic requirements and decisions.
- 1.3.2 **Admissions**. Admissions decisions are within the sole purview of University based on criteria established by University and consistent with any University, State, or accreditation regulations.
- 1.3.3 **Financial Aid**. University will be solely responsible for the administration of all financial aid programs; Supplier shall not be involved in any manner in the award or disbursement of financial assistance or perform any work related to any of University's responsibilities related to financial aid.
- 1.3.4 **Delivery of Degree**. University is responsible for student education and evaluation, including assignments, exams, grading and grading policy, probation standards, and the awarding and recording of credits and degrees, credentials and/or certificates, and the discipline and/or dismissal of students.
- 1.3.5 **Accrediting Agency Application Submission**. University will be

- responsible for securing any accreditations, registrations, and state and international authorization and licensure approvals with respect to the Programs as may be necessary to operate in any jurisdiction or to otherwise accomplish the activities set forth in the Agreement.
- 1.3.6 **Hiring and Management**. University will be responsible for hiring and managing all of its faculty and staff working with the Program.
 - 1.3.7 **Student Academic Support**. University will be responsible for providing academic support it deems appropriate to students in the Program.
 - 1.3.8 **Job Placement**. University will be responsible for providing career and job placement services it deems appropriate to students in the Program.
 - 1.3.9 **Data Access & Service Support**. To the extent required for Supplier to provide Services hereunder, University will provide Supplier and Subcontractors the necessary data from the appropriate University's sources or systems required to create and manage the Programs and to inform the Analytics Dashboard. These data will be supplied to Supplier and Subcontractors via Application Programming Interface (API) or other mutually agreed, secure transfer methods. In addition, the University will give the Supplier and Subcontractors minimum necessary permissions to build and administer its Services in the Learning Management System (LMS). In connection with such access, University may require Supplier and Subcontractors to agree to additional systems access terms. To the extent the University does not grant Supplier with the necessary data, access or cadence, Supplier will not be held accountable for performing Services impacted by that lack of data, access or cadence, although Supplier will work with University in good faith to devise alternative solutions that will accomplish University's goals in such situations.
 - 1.3.10 **Licenses**. To the extent that the Supplier is using University systems' to deliver the Service, the University agrees to obtain the necessary permits, licenses and similar authorizations to access those systems, as required by law.
 - 1.3.11 **Relevant Program Information**. University will coordinate with Supplier to provide Supplier relevant information (subject to the requirements of the FERPA and other relevant laws and regulations), solely to be used by Supplier in connection with providing the Services.

1.4 Subcontractors

1.4.1 Use of Subcontractors. Supplier will source, vet and, create agreements with Subcontractors to provide services that conform to Supplier's best practices. Supplier will provide University all relevant agreements with Subcontractors providing services pursuant to this Agreement. If in its reasonable judgment, University determines, at any time, that a Subcontractor is not appropriate for quality, legal, or reputational reasons, Supplier will use its best efforts to find a substitute Subcontractor within thirty (30) days

1.4.2 Supplier Direct Services as a Subcontractor. In certain circumstances, Supplier can provide Services in the areas described in Section 1 above more effectively and/or efficiently than a Subcontractor. In those events, Supplier will perform those additional Services ("Supplier Provided Services"). Supplier Provided Services, including fees thereon ("Supplier Provided Services Fees"), will be detailed in the Statement of Work. Since Supplier's performing of the Supplier Provided Services are outside of Supplier's Program Services Advisor functions for which it receives University Fees, Program Fees, or Credit Fees (as defined in Exhibit B of this Agreement), Supplier will be entitled to collect additional fees, Supplier Provided Services Fees, for the Supplier Provided Services. However, Supplier will obtain written agreement from University of the Statement of Work prior to delivering any Supplier Provided Services. Supplier will invoice for Supplier Provided Services Fees as described in Exhibit B

2.0 Changes, Alterations and Modifications to Services. The University may, with good cause and with the consent of Supplier, such consent not to be unreasonably withheld, by a written order change the extent of the Services covered by this Agreement. Promptly upon receipt of the details of any change, Supplier shall either advise the University that the change will not affect its costs, or furnish: (a) a breakdown of estimated cost and changes to the Financial Arrangement of Exhibit B resulting from the requested change and (b) a statement of any necessary changes in the time of completion. Supplier's failure to advise the University within ten (10) days of the effect of any change in cost or completion time shall constitute Supplier's consent to conform to the change without change to the Financial Arrangement, or without change in other terms and conditions of this Agreement. If the change causes a material increase or decrease in costs, then an equitable adjustment of the Financial Arrangement to be paid to Supplier shall promptly be negotiated by the University and Supplier and incorporated as an amendment to this Contract.

3.0 Reporting.

3.1 In performing the Services under this Agreement, Supplier shall report to: Director of Project Management, School of Nursing.

3.2 Reports Format.

After the execution of this Agreement, Supplier will consult with the University for the purpose of designing financial and operating reports which can be generated periodically by Supplier's accounting system and operating systems and which are satisfactory to the University. These reports can be either printed documents or Excel spreadsheets. The Supplier will provide these reports at no cost to the University.

EXHIBIT B
**FINANCIAL ARRANGEMENT AND ADDITIONAL
UNIVERSITY COMMITMENTS**

General Services

The University will pay fees to Supplier for Services performed under this Agreement as follows:

1.0 **Supplier Fees.**

For the fees listed in this Section, Supplier will provide its expertise and perform its duties as Program Services Advisor as set forth in Exhibit A. The fees indicated are Supplier's standard Service fees for that function and shall apply unless modified in a specific agreement for a particular Program:

- a. \$12,000/month Service fee for University, covering all Programs between University and Supplier, to be paid by University as long as there is at least one Program in place ("University Fee").
- b. \$6,000/month for each Program ("Program Fee").
- c. A cumulative fee for all credit hours taken by all students accessing the Program or portion of the Program during an academic year calculated as per the Program Credit Fees Chart below ("Credit Fees"):

Program Credit Fees Chart
(Based on total University final enrollment across all Programs)

Credit Tier	Fee per Credit
For the first 10,000 credits	@\$68
Then, for the next 10,000 credits	@\$52
Then, for the next 10,000 credits	@\$36
Then, for the next 10,000 credits	@\$20
Then, for all credits thereafter	@\$4

By way of clarification, if the cumulative total of all credits taken by all students accessing any Program during such academic year ("Total Credits")

equals 9,500, the fee per credit will be equal to \$68 per credit or \$646,000. If the Total Credits is 26,000, the fee will be 10,000 times \$68 per credit (\$680,000) plus 10,000 times \$52 per credit (\$520,000) plus 6,000 times \$36 per credit (\$216,000) for a total of \$1,416,000.

Each of the University Fee and Program Fees (collectively, “Fixed Fees) and Credit Fees (together with “Fixed Fees,” “Supplier Fees”) will increase each year on each annual anniversary of the effective date hereof during the term of the Agreement by no more than the lesser of (i) 2.5% or (ii) at a rate equal to the annual average increase in tuition that the University charges its students for the Programs under this Agreement.

1.1 Subcontractor Fees

- 1.1.1 Each Subcontractor, including Supplier when acting as a Subcontractor, will charge such fees and expenses as set forth in its applicable subcontract (together, the “Subcontractor Fees”). Supplier will remit such payment to Subcontractor(s) subsequent to its receipt of such payment of Subcontractor Fees from University.
 - 1.1.2 These Subcontractor Fees will be prorated for partial months as appropriate.
 - 1.1.3 Any increases in Subcontractor Fees (e.g. anniversary increases) will be in accordance with the terms of the applicable subcontract and agreed to by the Parties in the applicable budget.
 - 1.1.4 Authorization to subcontract specific Services, the scope of those Services, and the fees for those Services will be commemorated in a Statement of Work between the parties that is incorporated into this Agreement and will be approved by both parties prior to any work commencing.
- 1.2 Supplier Provided Services Fees. Supplier will charge such Supplier Provided Services Fees for the Supplier Provided Services as detailed in the Statements of Work.

2.0 Expenses

- 2.1 Travel Expenses. Travel expenses must be itemized separately; actual and reasonable expenses according to the University policy as indicated in the Standard Practice Guide relating to travel expenses will be reimbursed with Supplier’s invoice. See website <http://www.finance.umich.edu/procurement/travelexpense>. All expenses under this section will need to be approved by University prior to Supplier or any Subcontractor incurring them.

- 2.2 Other Expenses. All reimbursable expenses, such as photocopies, supplies, photography, communication expenses and reproduction shall be billed at cost. All expenses under this section will need to be approved by University prior to Supplier or any Subcontractor incurring them.
- 2.3 University Expenses. The University will be responsible for all costs associated with providing its academic programs.
- 3.0 Invoicing.
- 3.1 Fixed Fees will be invoiced monthly.
- 3.2 Credit Fees invoiced for each academic term will be calculated based on the final cumulative total of all credit hours taken by students accessing any Program through such academic term within such academic year after giving credit for all previous Credit Fees invoiced for such academic year. A reconciliation of Credit Fees invoiced will be done with the last Credit Fees invoice for the last academic term of each academic year. Credit Fees calculated by student enrollment will be invoiced the day after the add/drop deadline for each academic term, but may be adjusted in extenuating circumstances.
- 3.3 Subcontractor Fees will be invoiced monthly for all Subcontractor services that are expected to be rendered during that month as agreed to in the Statement of Work. To the extent the amounts billed by Subcontractor to Supplier for actual services rendered differ from the amounts that Supplier bills the University for Expected Services to be rendered per the SOW, Supplier will reconcile those amounts and provide any appropriate adjustments.
- 3.4 Supplier Provided Services Fees will be invoiced monthly for Supplier Provided Services that are expected to be rendered during that month as agreed to in the Statements of Work.
- 4.0 Payment Terms. Payment will be made within thirty (30) days after the University's receipt of an invoice from Supplier.
- 5.0 Taxes. The fees, expenses and costs payable under this Agreement include all applicable taxes and shall not be changed as the result of the Supplier's failure to include any applicable tax, or as a result of any change in the Supplier's tax liabilities.
- 6.0 Withhold Payment. Upon providing notice and evidence for the set off, the University may withhold the whole or part of any payments to Supplier to the extent appropriate to set off University losses or costs to protect the University from loss, due to, but not limited to the following causes:
- 6.1 Defective work not corrected.
- 6.2 Damage to personnel or property of the University or third party caused by act, omission or negligence of Supplier, or its agents or employee.

EXHIBIT C **DATA PROTECTION**

The University is committed to protecting its information and data from unauthorized use and disclosure. Protecting information assets is driven by a variety of considerations including legal, financial, compliance, and other business requirements. To this end, Supplier shall comply with the terms and conditions of this Data Protection Agreement (DPA) in its management and disclosure of University Data, as defined herein.

- 1.0 Applicability to Other Agreements. The University and Supplier acknowledge that there may be prior agreements executed between the parties (and their affiliates/Subcontractors) and that there may be future agreements executed between the parties (and their affiliates/Subcontractors) (referred to as “***Other Agreements***”) that may contain confidentiality and security provisions of a similar nature as set forth in the DPA. The parties agree that, to the extent of any conflict between the DPA and the Other Agreements, the terms of the DPA shall control. The DPA terms and conditions shall be in addition to, and not in lieu of, any more stringent terms and conditions that may exist in the Other Agreements. The terms of this DPA shall only apply to Supplier’s obligation to keep and safeguard University Data, and any requirements of University to keep confidential Supplier’s information are or shall be addressed in the Other Agreements. The terms and conditions of this DPA shall apply to Supplier and all of its affiliates. Supplier represents that the individual signing below has the authorization to bind Supplier and its affiliates to this DPA.
- 2.0 University Data not protected under this DPA includes information or data that is publicly available or later becomes available other than through a breach of this DPA or Other Agreement, known to Supplier or its employees, subcontractors or agents prior to such disclosure other than from the University, is independently developed by Supplier or its employees, subcontractors or agents without access to or knowledge of the University Data, or subsequently obtained by Supplier or its employees, agents or representatives from a Third Party without obligations of confidentiality. The term “University Data” is any information or data that meet any of the following criteria:
 - 2.1 Institutional Data refers to any information or data that satisfies one or more of the following criteria:
 - 2.1.1 Relevant to planning, managing, operating, controlling, or auditing administrative functions of an administrative or academic unit of the University;
 - 2.1.2 Created, received, maintained or transmitted as a result of educational, clinical, research or patient care activities;
 - 2.1.3 Generally referenced or required for use by more than one organizational unit;
 - 2.1.4 Included in an official University administrative report;
 - 2.1.5 Used to derive information or a data element that meets the criteria above; and/or
 - 2.1.6 Generated by a University workforce member or agent using any of the above information or data.
 - 2.2 Data Protected by Law refers to any information or data that is protected by

federal, state or local law, including, without limitation, financial information under the Gramm-Leach- Bliley Act (“GLBA”), student information under the Family Education Rights and Privacy Act (“FERPA”), individually identifiable health information under the Health Insurance Portability and Accountability Act (“HIPAA”), and personally identifiable information under state security breach notification laws, as each are amended from time-to-time and as may be implemented by regulations, policies, edicts, opinions and practices.

- 2.3 Marked or Labeled Data refers to any information or data that is marked or labeled by the University as “confidential”, “proprietary” or any similar designation.
- 2.4 Analytical Data refers to any information or data that is collected, processed, or aggregated based upon the behavior of University-owned institutional data and is classified as sensitive.
- 2.5 Sensitive Data refers to any information or data whose unauthorized disclosure will or may have an adverse effect on the University’s reputation, resources, services or individuals.

3.0 Confidentiality and Data Security

- 3.1 Duty to Protect University Data. Supplier shall only use University Data as permitted by the Other Agreements, and shall not, directly or indirectly, disclose, copy, distribute, republish or allow any Third party to have access to any University Data, unless otherwise approved by University in writing. Supplier shall protect University Data in accordance with the terms of this DPA. In addition, Supplier represents warrants and covenants to University that it agrees that it complies with all applicable federal, state and local laws and regulations relating or pertaining to the use, disclosure, storage, handling and transmission of University Data. If Supplier has a need to disclose University Data to a Third Party, Supplier may disclose University Data to those Third Party vendors and consultants who have a need to know provided that such Third Party signs a confidentiality and non- disclosure agreement with substantially the same protections and restrictions as stated herein with such agreement naming the University as an intended third party beneficiary, and containing such other terms and conditions as reasonably requested by the University. Supplier may disclose University Data if so required by law (including court order or subpoena) in accordance with the procedures below.

3.2 Data Security

- 3.2.1 Duty to Protect University Data. Supplier shall provide evidence that it has implemented and maintains a documented information security program to protect and safeguard University Data. The program shall include administrative, technical, and physical safeguards that utilize commercially available industry best practices, and meet or exceed the University’s security policies, procedures and requirements, and applicable state and federal laws and standards. Upon request, the provider shall provide additional documentation of the information

- 3.2.2 security program.
- 3.2.2 Compliance with Personal Information Statutes. Supplier acknowledges that University Data may include personal information covered by various state personal information statutes. Supplier shall ensure that the storage, handling and transmission of the University Data complies with the existing and future federal and state laws (collectively, “**Personal Information Statutes**”), of all personally-identifiable University Data.
- 3.2.3 Notification of Suspected or Actual Breach. If Supplier believes that Data Protected by Law has been subject to unauthorized access, Supplier shall provide written notice to the University immediately and in any event within twenty-four (24) hours by sending e-mail to security@umich.edu. If the University determines that actions must be taken to comply with Personal Information Statutes, Supplier shall fully cooperate with the University to achieve such compliance and if compliance is required due to a breach by Supplier of this DPA. Supplier shall reimburse University for all costs and damages associated with such breach and compliance.
- 3.3 Protection of University Data. University Data shall not be accessed or used by Supplier to create aggregated or de-identified data unless to inform its Analytics Dashboard. Supplier will take all appropriate measures to ensure that third parties under its control do not access and modify University Data for purposes not contemplated by this Agreement.
- 3.4 Notice and Approval of Offshoring. Supplier represents and warrants to University that Supplier shall not: (a) perform any of its obligation under any Other Agreement from locations or using employees, contractors and/or agents, situated outside the United States, or (b) directly or indirectly (including through the use of subcontractors) transmit any University Data outside the United States, nor will Supplier allow any University Data to be accessed by Supplier employees, contractors and/or agents from locations outside the United States without notifying and gaining the written approval of the University.
- 3.5 Return or Destruction of University Data. At any time and upon University’s written request, Supplier shall promptly return, within ten (10) business days, all originals and copies of University Data, whether in printed or electronic form, including any and all backups and archived data. In lieu of a return of University Data, with the University’s written consent, Supplier shall promptly destroy all originals and copies of University Data, whether in printed or electronic form, including any and all backups and archived data in accordance with industry standards and the federal government’s best practices.
- 3.6 On-going Security Program Evaluation. Upon the University’s written request, Supplier shall provide documentation on the current state of its security program.
- 3.7 General Data Protection Regulation. The parties shall conform to Exhibit D with respect to the General Data Protection Regulation.

EXHIBIT D
GENERAL DATA PROTECTION REGULATION (GDPR) ADDENDUM

This Addendum (Addendum) governs all processing of personal data that is subject to the GDPR (as defined below) and necessary for the provision of services by Supplier to the University pursuant to the General Services Agreement (the “Agreement”). To the extent of any conflict between this Exhibit D and the terms of the Agreement or any other document or exhibit, this Exhibit D shall control with respect to personal data that is subject to the GDPR.

1. Definitions

1.1. For purposes of this Addendum:

- 1.1.1. the term “personal data” shall mean any information relating to an identified or identifiable natural person that is subject to the GDPR and is processed for or on behalf of the University;
- 1.1.2. the term “processing” shall mean any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction; and
- 1.1.3. The term “data subjects” shall mean any identified or identifiable natural person about or from whom data are collected as part of the Agreement or its Exhibits.

2. Scope.

- 2.1. This Addendum is applicable to processing of personal data that falls under Regulation (EC) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the “Regulation” or the “GDPR”) and its applicable implementing laws and that is required to provide the services subject to the Agreement. .
- 2.2. In particular, the personal data that is subject to this Addendum is:
 - 2.2.1. Identification data, academic data, usage data, communications, admissions data, and performance data
- 2.3. The personal data that is subject to this Addendum as referenced above is further related to the following categories of data subjects:

2.3.1. Students, faculty, staff, prospective students, guests, and volunteers.

2.4. Pursuant to the Agreement, personal data is processed by the Supplier on behalf of the University for the purpose(s) of:

2.4.1. University offering online courses and degrees, academic services, and recruiting and admissions.

2.5. Personal data shall be processed by Supplier on behalf of the University of Michigan for the term of the Agreement.

3. Roles

3.1. The University agrees that it is responsible for compliance as the data controller under the GDPR with respect to the processing defined in section 1.

3.2. Supplier agrees that it is responsible for compliance as the data processor under all applicable data protection laws with respect to the processing defined in section 1.

4. Processing Requirements

4.1. Supplier shall process personal data received from the University or collected or otherwise processed on behalf of the University only as provided in the Agreement or on documented written instructions from the University, including with regard to transfers of personal data to third countries and will not process that data in any other way or for any other purpose.

4.2. Supplier shall only process the personal data defined in paragraph 1 of this Addendum that are necessary for the provision of the service as described in the Agreement.

5. Security and Confidentiality

5.1. Supplier represents that it implements the appropriate technical and organizational measures to ensure a level of security appropriate to the risks for the rights and freedoms of persons, taking into account the nature of processing and the information made available to Supplier.

5.2. Supplier shall inform the University without undue delay, and in any event no more than 48 hours after having become aware, of any data breach concerning personal data that is processed on behalf of the University.

5.3. Supplier represents that the persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate

statutory obligation of confidentiality.

6. Accountability

- 6.1. Where necessary, Supplier shall assist the University with conducting Data Protection Impact Assessments for the processing of personal data processed by Supplier on behalf of the University. To that end, Supplier shall make available to the University all information necessary to demonstrate compliance with the GDPR and shall allow for and contribute to audits conducted by the University or mandated by the University, where necessary. A request for audit, detailing the scope of the audit and the methods intended to be employed, will be sent to the Supplier at least 3 business days in advance of the planned audit. The University shall bear its own expenses in relation to any audits. Nothing in this Exhibit D shall be deemed to require the disclosure to the University or anyone else of any trade secrets of Supplier or its subcontractors.
- 6.2. The parties acknowledge that Supplier shall use certain systems of the University for the processing of personal data. No provision of this Exhibit D will be applicable to Supplier to the extent that it would require Supplier to exercise any direction, oversight or control over the information technology systems owned or operated by the University or any of its personnel, affiliates or other contractors.

7. Rights of data subjects

- 7.1. The University is responsible to assess any requests from data subjects in the exercise of their rights granted by the GDPR and its applicable implementing laws, which are related to processing of personal data in the scope of this Addendum, and to provide a resolution to such requests; provided, however, that Supplier may make any notifications to data subjects and/or government authorities solely to the extent that Supplier reasonably determines such notices are required by applicable law and that the University has not already satisfied the requirement, provided that before doing so, Supplier will consult with the University, and the parties will coordinate their efforts.
- 7.2. Supplier shall promptly direct to the University all requests it may receive directly from data subjects in the exercise of their rights in relation to the processing subject to this Addendum.
- 7.3. Supplier shall assist the University by implementing appropriate technical and organizational measures, insofar as it is possible, for the fulfilment of University's obligations to inform the individuals about the details of the processing and to respond to requests for access, rectification, erasure, and portability of personal data as provided for by the GDPR and its

implementing laws, as well as for requests to object to processing of such data.

- 7.4. If a data subject brings a claim directly against the University for damages suffered in relation to Supplier's breach of this Addendum or of the GDPR, Supplier will indemnify the University for any cost, charge, damages, expenses or loss arising from such a claim.

8. Sub-processor Obligations

- 8.1. The University authorizes Supplier to engage sub-processors as necessary for the performance of the Services. Supplier shall inform the University of the identity of and any intended changes concerning the addition or replacement of subcontractors having access to personal data processed on behalf of the University no less than two (2) weeks in advance of any intended change concerning sub-processors and shall only proceed with such change if no objection is raised by the University.
- 8.2. When Supplier engages a sub-contractor for carrying out processing activities on behalf of the University, the same data protection obligations set out in this Addendum shall be contractually imposed on that subcontractor, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of the GDPR and its applicable implementing laws.
- 8.3. At the time of execution of the Agreement, Supplier had agreements with the following sub- processors that can potentially process personal data on behalf of the University:

8.3.1. INTENTIONALLY LEFT BLANK

9. Return or Destruction of University Data

- 9.1. Any rights Supplier may have to retain, use or process in any way whatsoever personal data shall immediately cease upon termination or expiration of the Agreement. All personal data (whether such data is processed or controlled by Supplier or any sub-processor) must be destroyed or returned to the University within 30 days of such termination or expiration. In addition, at any time and upon University's written request, Supplier shall promptly return, within thirty (30) days, all originals and copies of personal data, whether in printed or electronic form, including any and all backups and archived data. In lieu of a return of personal data, but only with the University's prior written consent, Supplier shall promptly destroy all originals and copies of personal data, whether in printed or electronic form

and whether controlled by Supplier or any sub-processor, including any and all backups and archived data in accordance with industry standards and the federal government's best practices and certify the same in writing to University. Notwithstanding the foregoing, if applicable law requires continued storage of such personal data by Supplier, Supplier shall be allowed to keep one copy of such personal data to satisfy its requirements with such applicable law.

ATTACHMENT B - GENERAL SERVICES AGREEMENT

AGREEMENT FOR GENERAL SERVICES BETWEEN THE REGENTS OF THE UNIVERSITY OF MICHIGAN AND *Noodle Partners*

This AGREEMENT FOR SERVICES is made between **THE REGENTS OF THE UNIVERSITY OF MICHIGAN** (“University”), a Michigan Constitutional Corporation, Ann Arbor, Michigan, and **Noodle Partners** (“Supplier”).

The following terms and conditions shall be observed. Any Supplier terms and conditions included with Supplier’s invoice or any other document provided by Supplier shall be of no effect.

- 1.0 **Description of Services.** Supplier hereby agrees to provide *Online Program Management* Services, “Services” defined in Exhibit A and to comply with all “Specifications”, which may be included in the Services description at Exhibit A. The University shall use reasonable efforts to direct applicable request of such Services to Supplier under this Agreement. Unless otherwise expressly stated herein, this Agreement does not confer on Supplier the right to be the exclusive provider of the Services to the University.

- 2.0 **Term.** The initial term of this Agreement will begin on *September 1, 2018 and end on September 1, 2021* or until satisfactory completion of services, whichever occurs first. At the end of the initial term, this Agreement will be evaluated. If the parties agree that it is a mutually beneficial relationship, the Agreement may be extended in writing for up to 3 additional years. Time is of the essence in this Agreement.

We would like clarification on the statement “Time is of the essence in this Agreement” and to which provisions you would like this to apply.

- 3.0 **Performance Standard.** Supplier agrees to perform the Services described in this Agreement to the satisfaction of the University and with the standard of care and skill of an expert regularly rendering Services of the type required by this Agreement, and in conformance with all applicable federal, state, local and University law, regulation, ordinance and license.

We would like to add language that Supplier agrees to perform the Services to the ‘reasonable’ satisfaction of the University.

- 4.0 **Warranties and Representations of Supplier.** Supplier acknowledges that the University is relying on these representations and warranties as essential elements to this Agreement, representing as they do, material inducements, without which the University would not have entered into this Agreement.

We would like to modify the suggested language to incorporate warranties and representations by both parties.

- 4.1 **General Services Warranty.** Supplier warrants that all Services provided shall conform to the level of quality performed by experts regularly rendering this type of Service. Supplier warrants for ninety (90) days after accepted completion of a requested Service that its Services are fully satisfactory to the University and will repair, replace or redo at no additional cost to the University any unsatisfactory Services.

We would like to modify the foregoing language to read that we agree to perform Services with reasonable care, consistent with applicable professional and industry standards and in compliance with all applicable laws. We would also agree to make a good faith and commercially reasonable effort for the first 90 days after the completion of a requested Service, at no additional cost to University, to repair, replace, or redo Services performed in a manner inconsistent with the agreed upon specifications.

- 4.2 **Qualifications.** Supplier warrants that it, as well as its employees, agents and subcontractors engaged to provide items or Services under this Agreement (collectively “Supplier Personnel”), has and will maintain all the skills, experience, and qualifications necessary to provide the Services contemplated by this Agreement, including any required training, registration, certification or licensure.

The required qualifications, by way of example only and without limitation, shall expressly include (a) all qualifications identified in Exhibit A.

- 4.3 **Conflict of Interest.** Supplier warrants that to the best of Supplier’s knowledge, there exists no actual or potential conflict between Supplier and the University, and its Services under this Agreement, and in the event of change in either Supplier’s private interests or Services under this Agreement, Supplier will inform the University regarding possible conflict of interest which may arise as a result of the change. Supplier also affirms that, to the best of Supplier’s knowledge, there exists no actual or potential conflict between a University employee and Supplier.

For clarity, we would like to add language that the University acknowledges that Supplier will be working with other universities under separate agreements.

- 4.4 **Nondiscrimination.** Supplier warrants that Supplier is an equal opportunity employer and that, during the performance of this Agreement, it will comply with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976.

- 4.5 Good Standing. Supplier warrants that Supplier is a legally organized entity in good standing under the laws of the state of its organization and, where required, in good standing under the laws of the State of Michigan.
- 4.6 Noninfringement. Supplier warrants that the Supplier's Services and/or the University's use of products, processes, techniques and methodologies provided by Supplier or developed by Supplier shall not infringe upon the copyright, patent or other proprietary rights of others.

We accept but would like both parties to warrant regarding non-infringement.

- 4.7 Not Excluded. Supplier warrants that neither Supplier, nor, to the best of Supplier's knowledge, Supplier Personnel and/or any of its Principals; is excluded from participating in the Medicare or Medicaid program nor currently debarred, suspended, proposed for debarment, declared ineligible for the award of contracts by any U.S. Federal agency or listed in the U.S. Government System for Award Management (SAM) (www.SAM.gov) in accordance with Executive Orders 12549 and 12689, "*Debarment and Suspension*". Supplier shall immediately notify the University if it or Supplier Personnel and/or any of its Principals becomes debarred or suspended during the term of this Agreement.

Supplier further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Supplier or its affiliates, or to the best of its knowledge, against any Supplier Personnel. Supplier agrees that it shall not perform any act that shall cause Supplier to be excluded from a federal health care program or debarred, suspended or listed in the U.S. Government System for Award Management (SAM) as excluded from participating in Federal Procurement or Nonprocurement Programs during the term of this Agreement.

"Principals" for the purposes of this certification, means officers; directors; owners; partners; principal investigators; and persons having primary management or supervisory responsibilities with a business entity (e.g., general manager; plant manager; head of a subsidiary, division or business segment, and similar positions).

- 4.8 Bonded. Supplier warrants that it is bonded as may be required by law for the Services.

- 5.0 Financial Arrangement. The detailed financial arrangement is in Exhibit B.

- 6.0 Termination.

- 6.1 Termination for Breach. Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided the breach continues for thirty (30) calendar days ("Cure Period") after receipt by the breaching party of written notice of the breach from the non-breaching party. Cure of the breach within the Cure Period shall continue the Agreement in full force and effect, provided however three (3) breaches of a material provision are an independent material breach not subject to cure.

Each party should have the opportunity to cure a material breach within the later of a reasonable amount of time in which such material breach could be cured and 60 days, except for a breach of the failure to make a due payment, in which case the period to cure the breach would be 30 days. We would like to exclude Supplier's untimely provision of Services from the provision stating 3 breaches of a material provision are an independent material breach not subject to cure because the delivery of such Services are dependant on the University performing its services.

- 6.2 **Immediate Termination.** The University shall have the right to terminate this Agreement immediately upon notice to Supplier should any of the following situations occur:

- 6.2.1 Supplier or Supplier Personnel do anything to harm the business reputation of the University;
- 6.2.2 Supplier or any Supplier Personnel is excluded from a federal health care program;
- 6.2.3 If any warranty or representation of the Supplier in this Agreement is or becomes false or untrue;

We want to add language that requires the warranties and representations of Supplier to be "knowingly" false or untrue at the time they were made because a change in conditions would not be the Supplier's fault.

- 6.2.4 A person's health or safety is or may be in imminent and serious danger due to the actions or inaction of Supplier or Supplier Personnel;
- 6.2.5 There may be imminent and serious harm to the environment or the University property from Supplier's acts or inactions or those of Supplier Personnel; or
- 6.2.6 The University reasonably determines Supplier has violated a law in providing the Services.

- 6.3 **Effect of Termination.** Upon notice of termination for any reason, Supplier shall cease all activity. Supplier has sixty (60) days from the date of termination to submit final invoices for final satisfactory Services under this Agreement. University will have no obligation to assist in billing issues or issue payment under the terms of this Agreement for invoices submitted after the sixty (60) day period.

We want to add language that requires the termination by the University to be for a reason articulated in the Agreement because termination should not be "for any reason." We also want it to be clear that if the University terminates, the University would have to pay Supplier for the work performed and monies owed to Supplier up to the point of termination, even if the rest of the services contemplated in the Agreement are not finished. Accordingly, we want to remove the word "Services" from the phrase "final satisfactory Services," and replace it with "Services." Further, we would like to include language that requires the Services to be performed to the reasonable satisfaction of the University, such approval not to be unreasonably withheld.

Additionally, we want Supplier to have 60 days from the notice of termination to submit the invoices, rather than 60 days from the date of termination.

- 6.4 **Without Cause Termination.** It is expressly understood and agreed that the University may terminate this Agreement, with or without cause, by providing at least thirty (30) calendar days advance written notice of the termination date to the Supplier.

We cannot agree to a termination for convenience provision, which is what this section provides. We believe the University is sufficiently protected by the termination for cause provisions and the reps and warranties section.

- 6.5 **Change in Law.** If, subsequent to the execution of this Agreement, it is determined by either party's legal counsel that this Agreement or any of its provisions may violate or does violate any law, rule, or regulation, the parties agree to renegotiate the provision(s) so that it (they), as well as this entire Agreement, complies with the law, rule or regulation. If the parties are unable to come to an agreement within thirty (30) calendar days, either party may, without further notice, immediately terminate this Agreement.

- 7.0 **Compliance with Laws, Policies & Procedures.** Supplier is advised that the University has established a compliance program to assure compliance with applicable laws and University policies designed to prevent and detect fraud, waste, and abuse. To the extent applicable to the Services, Supplier shall fully comply with all federal, state, local, and University laws, rules, regulations, ordinances, policies and licenses, including applicable building policies and procedures, the University's Ordinances (reference website <http://www.umich.edu/~regents/ordinance.html>) and any standards of the Centers for Medicare and Medicaid Services ("CMS"), Michigan Department of Community Health ("MDCH") and The Joint Commission , all as may be amended from time to time. Supplier acknowledges that Information about (1) the UMHS Compliance Program, (2) UMHS policies and procedures, (3) federal and state false claims and false statements laws, as well as (4) information about whistleblower protection under these laws, is available at <http://www.med.umich.edu/vendors/>. Supplier agrees to further disseminate information about applicable University policies, as necessary, to ensure that all Supplier Personnel and subcontractors, as applicable, involved in performing the Services are aware of the existence and location of applicable University policies as well as how and where to make reports to the University regarding any compliance concerns. To the extent that University policies provide for reviews or audits of claims or services arising from this Agreement, Supplier agrees to participate in such audit insofar as it is relevant and applicable to Supplier and Supplier Personnel's interaction with University. If Supplier identifies potential non-compliance with any applicable laws, regulations or policies in connection with the provision of the Services, Supplier shall promptly contact the University of Michigan Compliance Hotline at 866-990-0111 and provide details concerning the suspected wrongdoing sufficient to facilitate an investigation by University.

Supplier shall be solely responsible for insuring that any recommendations made in connection with the Services comply with all applicable federal, state, local and University laws, rules, regulations, policies and procedures. Unless otherwise expressly provided for in this Agreement, Supplier shall obtain and comply with all permits, licenses and similar authorizations that are

necessary to provide the Services. By executing this Agreement, Supplier warrants and represents that it has all legally required licenses and permits needed to perform the Services.

8.0 Patents, Copyright, Data and Documents.

8.1 Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with this Agreement, Supplier shall furnish to the University, within thirty (30) days of the creation or conception, the complete information with respect to such invention or discovery and the University shall have the sole power to determine whether and where a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent that may result. Supplier shall, at the University's expense, execute (or cause to be executed) all documents and do (or cause to be done) all things necessary or proper with respect to such patent application, including causing Supplier Personnel to do the same.

We would like to clarify that any improvements Noodle makes on its own technology and services cannot be the subject of a patent application by University.

8.2 All materials conceived or prepared by Supplier under this Agreement including but not limited to any and all notes, designs, drawings, memoranda, reports, computer programs and code (including supporting data), and the technical data, if any, furnished by Supplier pursuant to this Agreement or developed by the Supplier in connection with the performance of Services ("Work Product") shall be the property of the University. All Work Product shall be delivered to the University upon demand, and the University shall have the right to use Work Product for any purpose that it may deem desirable without the necessity of further compensating Supplier or any other person or persons for their use.

Supplier hereby grants to the University all rights, title and interest in and to all Work Product, and Supplier agrees that Work Product shall be considered "works made for hire" made exclusively for the University under U.S. copyright laws. Supplier shall execute all documents and do all things necessary or proper to give full effect to the provisions of this section. In the event any Work Product shall not be a work for hire under the U.S. copyright laws, Supplier and Supplier Personnel hereby assign to the University all rights, title and interest in the work and agree to execute whatever assignment of copyright and ancillary and confirmatory documents as may be required or appropriate to transfer exclusive title in the Work Product and any copyright in it to the University.

We can agree to this paragraph if it is made clear that anything Supplier creates that is related to academic content is owned by the University, but that computer programs, technical data, and other material pertaining to Services Supplier provides have to be owned by Supplier.

8.3 If this Agreement is funded under a Government Prime Contract or Grant, which provides a different disposition for 8.1 and 8.2 above, the latter will govern.

Before we agree to this section, we would like to discuss with you the ramifications of section 8.1 and 8.2 if the Agreement is funded under a Government Prime Contract or Grant.

- 9.0 **Insurance Coverage and Levels**. Unless more specific insurance provisions are attached, Supplier shall, at Supplier's expense, obtain and maintain the following coverages:
- 9.1 Commercial general liability insurance, including contractual products and completed operations insurance (\$1 million per occurrence/\$3 million annual aggregate).
 - 9.2 Professional Liability/Errors and Omissions Insurance with limits not less than \$1 million per occurrence and \$2 million annual aggregate if the activity is deemed professional in nature or performed by someone with a professional designation and is excluded from the Commercial General Liability Insurance.
 - 9.3 Worker's Compensation at statutory limits in accordance with the appropriate State of jurisdiction including Employer's liability (with minimum \$500,000).
 - 9.4 Automobile liability for owned, non-owned and hired vehicles minimum limit (\$1 million each accident).
 - 9.5 Supplier agrees to have the Regents of the University of Michigan added as additional insured with respect to Commercial General Liability Insurance for purposes of contract performance and any personal or property damages arising out of Agreement.
 - 9.6 Supplier agrees to provide the University with thirty (30) days prior written notice of any reduction in limits or cancellation of any of the above insurance.
 - 9.7 If any of the required insurance is on a "claims made" basis and is cancelled during the term of this agreement, Supplier agrees to purchase **tail coverage or prior acts coverage** so that such insurance is in effect from the date the Agreement is executed to three (3) years after its termination.
 - 9.8 Supplier shall provide the University with a certificate of the above insurance coverages and amounts. Compliance with the foregoing requirements as to carrying insurance and furnishing evidence of it will not relieve the Supplier of its liabilities and obligations under this Agreement.
- 10.0 **Indemnity**. Each party shall defend, indemnify and hold harmless the other party, its board members, officers, employees, agents and students (if the University) from and against any costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney fees, which may arise out of the indemnifying party's acts or omissions under this Agreement for which the indemnifying party would be liable in law or equity.

The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the other party, at its expense,

to participate in the defense or settlement of the claim. When a claim is resolved by the indemnifying party's payment of money, it shall have final authority regarding defense and settlement. When a claim resolution requires equitable relief against the non-indemnifying party or the indemnifying party has not or will not pay the money required for resolution, the parties shall cooperate regarding defense and settlement.

- 11.0 Audit. The Supplier is responsible for keeping accurate and reasonable records related to its performance and obligations under this Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement. The Supplier agrees that the University or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. The Supplier shall make available to the University or its agents all such records and documents for audit on the Supplier's premises during regular and reasonable working hours within ten (10) business days of a written request for availability. Supplier agrees to either (a) allow the University to make and retain copies of those documents useful for documenting the audit activity and results or (b) sequester the original or copies of those documents the University identifies for later access by the University. The Supplier further agrees to disclose within ninety (90) days of receipt any independent auditors' reports, which bear directly on the performance or administration of this Agreement.

The right to audit shall include periodic examinations of records throughout the term of the Agreement and for a period of three (3) years after its termination. The right to audit shall also apply to agents and subcontractors hired by the Supplier for the purpose of fulfilling the Agreement. In the event that audits discover substantive findings related to fraud, misrepresentation or non-performance, the University may recoup the costs of the audit work from the Supplier.

Supplier should have 30 days to make available the records and documents for the audit, including our invoices and paperwork for subcontractors' and agents' services.

We cannot commit to granting audit rights to all of our subcontractors and agents, but do commit to use reasonable efforts to get any reasonable information requested by the University.

- 12.0 Confidentiality. Supplier shall keep confidential and not disclose to third parties any information developed or created under this Agreement or provided by the University or by private individuals, organizations or public agencies pursuant to this Agreement, including protected financial information under Gramm-Leach-Bliley Act, unless Supplier has received the prior written consent of the University to make the disclosure or unless required by law or legal process. Only Supplier Personnel with a need to know may have access to or use University information.

This obligation of confidentiality does not extend to information that is or shall become through no fault of Supplier available to the general public.

The University should agree to keep Supplier's confidential information confidential.

13.0 **Removal of Supplier Personnel.** All Supplier Personnel shall have a background appropriate for the location and the type of work to be performed by the individual, including without limitation any disqualifying criminal background. If the University becomes aware that Supplier or any Supplier employee, agent or contractor (collectively “Supplier Personnel”) (a) does not have the background appropriate for the location and type of work to be performed by the individual, or (b) repeatedly fails, in the University’s sole discretion, to perform in a competent manner, the Supplier Personnel shall no longer be acceptable to the University. Under either circumstance, after the University notifies Supplier in writing citing the grounds and specific supporting facts. Supplier shall no longer schedule the Supplier Personnel to provide or support Services for the University under this Agreement or any other Agreement with the University. The University, in its sole discretion, may modify this prohibition upon presentation in writing by Supplier of adequate reasons and facts for modifying the prohibition.

If Supplier learns during the term of this Agreement of any lapse in qualifications of any of the Supplier Personnel to meet the warranted qualifications it must immediately remove the affected personnel whose qualifications have lapsed and inform the University of the date when the affected personnel was no longer qualified to provide the Services being performed by them.

14.0 **Operational Matters.**

- 14.1 On-site Supplier Personnel shall follow and adhere to the University policies and procedures applicable to the provision of the Services including, by way of example only and without limitation (a) sign-in procedures, (b) identification badges, (c) executing confidentiality statements, (d) participation in any required training, parking regulations.
- 14.2 Except as otherwise expressly provided in this Agreement, Supplier shall be responsible for payment of all business expenses incurred while providing the Services.

We would like clarification of this provision because our model is based on passing through expenses to the University, which is how we keep our overall costs and fees so low. This is a model that benefits the University.

- 14.3 Supplier agrees to timely cooperate and assist with any applicable performance improvement and quality assurance activities of the University as they may relate to the Services.
- 14.4 **Supplier Cooperation.** Supplier shall cooperate and make adjustments as necessary in the methods and timing for provision of Services under this Agreement so that other Suppliers and University personnel can perform their independent obligations to the University.
- 14.5 **Limitation on Supplier Personnel.** Supplier agrees that unless otherwise approved by the University in writing in advance, no Supplier Personnel shall provide services if any of the following have occurred: (a) any *applicable* registration, certification, licensure (including where applicable, Medicare/Medicaid provider status) of Supplier Personnel, in any state, is or has been threatened with limitation, suspension, revocation or exclusion; (b) any *applicable* registering, certifying, or licensing board reprimands, sanctions or otherwise disciplines Supplier Personnel; or (c) a negligence or malpractice

claim related to the provision of the Services or similar services has been asserted against Supplier Personnel.

Instead of providing that no Supplier Personnel can provide services if any of the events in this section occur, we would like only the individual in noncompliance with this section to be prevented from providing services. Further, we would want the individual to be able to resume the provision of services upon the resolution of such issue, except if the individual is found liable for negligence or malpractice. We think this is consistent with what you want this to say.

- 14.6 Access to Books and Records. The parties agree that if this Agreement is subject to the Medicare statutes and regulations governing access to books and records of subcontractors (Section 952 of the Medicare and Medicaid provisions of the Omnibus Reconciliation Act of 1980, which amends section 1861(V) (1) of the Social Security Act), Supplier shall retain and, for four (4) years after Services are furnished by Supplier, shall allow the authorized representatives of the Comptroller General, the University, and the Department of Health and Human Services access to this Agreement and to the books, records, and other documents of Supplier that are necessary to verify the nature and extent of the costs of the Services. In the event Supplier receives a request for access, Supplier agrees to notify the University immediately and to consult with the University regarding what response will be made to the request. This Agreement to provide access shall continue for four (4) years after the Services are terminated.

If Supplier carries out any responsibilities under this Agreement through the use of a subcontractor, including any organization related by ownership or control with Supplier, when the subcontract is worth or costs \$10,000 or more over a twelve (12) month period, Supplier shall obtain and forward to the University the subcontractor's written promise to be bound as Supplier is under this same access Agreement.

- 15.0 Duties of the University. Except as otherwise expressly provided in this Agreement, the University will furnish Supplier with the space, facilities and accommodations, the University deems reasonably necessary to support Supplier in the provision of the Services contemplated by this Agreement.

- 16.0 Miscellaneous.

- 16.1 Use of the University Name and Marks. The University acknowledges Supplier's right to make, without the consent of the University, public statements regarding the existence of the contract and its terms and conditions to accurately identify the products or services being supplied. However, except as permitted by the previous sentence, Supplier may not, without the prior written consent of the University's Office of Global Communications, make any public statement (for example through a press release or any form of advertisement) characterizing the University's relationship with Supplier or implying or stating the University's endorsement of Supplier or Supplier's product or services. The University may withhold its consent in its absolute discretion. Supplier acknowledges that the University will require ten (10) business days to consider any

request for consent. Supplier may not under any circumstances use any University Trademark.

We need language that requires University to grant Supplier a royalty free license in its trademarks, service marks and trade names to use solely in connection with Supplier's responsibilities and obligations, including the providing of services, under the Agreement. We would also need language that gives Supplier the right to sublicense, without cost, use of this intellectual property to Supplier Personnel to similarly use solely in connection with Supplier Personnel's responsibilities and obligations, including the providing of services, under the Agreement.

- 16.2 Use of Premises or the University Property. Supplier shall neither use nor allow Supplier Personnel to use any part of the University premises or property for any purpose other than the performance of the Services under this Agreement. Without limiting the generality of the statement above, Supplier shall not use the University in any manner that might jeopardize the Medicare provider status of the University or the tax exemptions or casualty insurance of the University.
- 16.3 Independent Contractor Status of Parties. It is expressly understood that Supplier is an independent contractor and not the agent, partner, or employee of the University. Supplier and Supplier Personnel are not employees of the University and are not entitled to tax withholding, Worker's Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. Supplier shall not have any authority to enter into any contract or agreement to bind the University and shall not represent to anyone that Supplier has such authority.
- 16.4 Assignment. Supplier may not subcontract, assign or transfer this Agreement or any interest or claim under this Agreement without prior written approval of the University. Notwithstanding any consent by the University to any assignment, Supplier shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirements, in writing, by the University. The Supplier shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

We would like to add language that Supplier can assign this Agreement to a purchaser of Supplier or Supplier's business with the approval of the University, such approval not to be unreasonably withheld. We would like the University to be subject to the same provisions in this section as Supplier.

- 16.5 Notices. Any notice to either party must be in writing, specifically reference this Agreement and signed by the party giving it. Service upon the University shall be addressed to: Procurement Services, 7071 Wolverine Tower, 3003 S. State Street, Ann Arbor, Michigan, 48109-1282 USA. Service upon the Supplier shall be served to the

address indicated on this Agreement for Supplier (or to such other address as may be later designated by written notice). Notice shall be by personal delivery, recognized overnight courier service, or by the United States mail, first-class, certified or registered, postage prepaid, return receipt requested. All such notices shall be effective when received, but in no event later than three (3) days after being placed in the hands of the United States Post Office or private courier service.

- 16.6 **Entire Agreement, Amendment.** This Agreement and its Exhibits constitute the entire understanding between the parties with respect to the subject matter and may not be amended except by an agreement signed by Supplier and an authorized representative of the University. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties.
- 16.7 **Severability.** The terms of this Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
- 16.8 **Governing Law, Construction and Venue.** This Agreement shall be governed by and construed under the laws of the State of Michigan without regard for principles of choice of law. Any claims, demands, or actions asserted against the University shall be brought in the Michigan Court of Claims. Supplier, its successors and assigns, consent to the jurisdiction of a court with applicable subject matter jurisdiction sitting in the state of Michigan with respect to any claims arising under this Agreement.
- 16.9 **Headings.** The paragraph headings in this Agreement are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this Agreement.
- 16.10 **Waiver.** No delay or omission by either party to exercise any right or remedy under this Agreement shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.
- 16.11 **Survivability.** Provisions surviving termination or expiration of this Agreement are those which on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, confidentiality, warranty and choice of law and venue.
- 16.12 **Execution.** This Agreement may be executed in duplicate, each of which when executed and delivered shall be an original. The parties acknowledge and agree that this Agreement has been mutually discussed, negotiated, and drafted by the parties.
- 16.13 **No Third Party Rights.** Nothing in this Agreement shall be construed as creating or giving rise to any rights in third parties or persons other than the named parties to this Agreement.
- 16.14 **Force Majeure.** Neither Supplier nor the University shall be liable for failure to perform its respective obligations under the Agreement when failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage,

weather and energy related closings, or like causes beyond the reasonable control of the party (“Force Majeure Event”). In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall: (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible, including, as applicable, abiding by the disaster plan in place for the University. In the event that any Force Majeure Event delays a party’s performance for more than thirty (30) calendar days following notice by the delaying party pursuant to this Agreement, the other party may terminate this Agreement immediately upon written notice.

We would like to add language that provides that the parties are not excused from performance of their payment obligations if a force majeure event occurs. We would also want a party to be able to terminate under this section after 45 days of non-performance, rather than 30 days.

- 16.15 Tax Exempt Status. Supplier acknowledges that the University is a tax-exempt institution, granted such status by authorized taxing units of State of Michigan, and is exempt from Federal Excise Tax and Michigan General Sales Tax (see Michigan Public Act 167 of 1933.Section 4 as amended).
 - 16.16 Dispute Resolution. Supplier and the University will attempt to settle any claim or controversy arising from this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary.
 - 16.17 Freedom of Information Act. Nothing in this Agreement shall in any way limit the ability of the University to comply with any laws or legal process concerning disclosures by public bodies. The parties acknowledge that any responses, materials, correspondence or documents provided to the University are subject to the State of Michigan Freedom of Information Act (“Act”) and may be released to third parties in compliance with that Act or any other law will not constitute a breach or threatened breach of this Agreement.
 - 16.18 Supplier Damage to the University Property. Without regard to any other section of the Agreement, Supplier shall be responsible for the costs to return to “as was” condition from any damage caused to the building, grounds, or other equipment and furnishings caused in whole or part by Supplier Personnel while performing activities arising under this Agreement. Supplier shall immediately report in writing the occurrence of any damage to the Building/Project Manager.
 - 16.19 Supplier Clean-up. Supplier will remove all packing materials, rubbish and dirt from the University premises associated with Supplier’s provision of Services under this Agreement.
- 17.0 Confidentiality of Health Information. The parties agree that Supplier’s provision of the Services under this Agreement does not qualify Supplier as a “Business Associate” of the University as

defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, (which act and regulations as amended, restated and superseded from time to time are collectively referred to as "HIPAA"). Supplier will take all necessary steps to ensure Supplier Personnel do not seek or obtain access to protected health information created, maintained, or received by the University. In the event the scope of Supplier's Services changes or HIPAA changes (including governmental guidance offered on HIPAA) such that the University concludes the Agreement must be amended or further documents executed to ensure the University's compliance with HIPAA, the parties agree to promptly take all actions necessary to ensure the University compliance with HIPAA.

This Agreement becomes binding when signed by both parties.

SUPPLIER: NOODLE PARTNERS

By:

Printed Name: John Katzman

Title: Chief Executive Officer

Date of Signature:

Address (for notices):

Noodle Partners

860 Broadway

Sixth Floor

New York, NY 10003

**FOR THE REGENTS OF THE
UNIVERSITY OF MICHIGAN:**

By: _____

Printed Name: Dave Gerstler

Title: Senior Procurement Agent

Date of Signature: _____

Address (for notices):

Procurement Services

7071 Wolverine Tower

3003 S. State St.

Ann Arbor, MI 48109

EXHIBIT A
SCOPE OF SERVICES
General Services

1.0 Scope of Services to be Provided.

- 1.1 Program Services Advisor For each Program, Supplier will act as a “Program Services Advisor,” in connection with which Supplier will (a) oversee all subcontracted Services to ensure the Services are performed in accordance with the agreed upon terms and the high standards which University and Supplier strive to meet, and (b) advise University using its in-depth experience and strategic knowledge to assist University in creating a state-of-the-art online program (“Program”).
- 1.2 Catalog of Services The Supplier and University (together the “Parties”) expect that each Program will have unique needs. The following items describe service areas relevant to online degree programs; University can choose, in its sole discretion, to offer these services internally, or to have Supplier hire and manage Subcontractors to provide these services:
 - 1.2.1 Marketing. Supplier and its Subcontractors can support a Program in conducting market research, and formulating and executing against a marketing strategy to attract students into the Program. Marketing services may include, but are not limited to, market research, branding, search engine optimization, microsites, strategic partnerships, public relations and communications.
 - 1.2.2 Recruitment. Supplier can work with University to train the relevant Subcontractor on the Program and ensure that the Program is receiving complete applications for review as outlined in the admissions’ requirements for the Program.
 - 1.2.3 Instructional Design & Media Production. Supplier and its Subcontractors can support a Program’s instructional design efforts by working with the Program’s instructional designers, faculty, and staff to create and periodically update any curricular and co-curricular materials or activities for the Program. Supplier and the relevant Subcontractors, at the request of University, can provide advice on best practices for online learning and how to design curricular and co-curricular components for the Program.
 - 1.2.4 Events and Student Groups. Supplier and its Subcontractors can support a Program in developing a plan for integrating students into both small and large-scale campus events (e.g., lectures, panel discussions, graduation activities), and for identifying pathways for connecting existing student groups in the Program and/or creating new opportunities for student groups in the Program.
 - 1.2.5 Immersions. Supplier and its Subcontractors can assist faculty and staff in developing immersion experiences, and meet the curricular and co-curricular

goals of the Program. Supplier can also support faculty and staff through hiring and managing Subcontractors to help with the planning and implementation of the immersion programs. This can include, but is not limited to, managing immersion student attendance and communications, arranging accommodations, and coordinating meals and social outings.

- 1.2.6 *Student Advising Support. Supplier and its Subcontractors can provide student advising support. Student advising support can include, but is not limited to: answering questions about program requirements; registration processes; the academic calendar; add/drop deadlines, processes and procedures for registering a disability; and how to access wellness services.*
- 1.2.7 *Student Success Support. Supplier and its Subcontractors can provide student success support. Student success support can include, but is not limited to: providing students access to advisors and/or creating content and programming that addresses: planning for success and goal setting; troubleshooting potential obstacles for success; time management; and support through personal challenges (including referrals to University resources). Supplier and its Subcontractors can also provide the Program with patterns of at-risk behavior identified through interactions with students and/or through retention data from the Analytics Dashboard.*
- 1.2.8 *Student Academic Support. Supplier and its Subcontractors can provide student academic support. Student academic support can include, but is not limited to, developing instructional videos and/or other resources (e.g., a tutoring platform), as well as synchronous tutoring and writing support to assist in students' academic success.*
- 1.2.9 *Practicum Placement. Supplier and its Subcontractors can assist the Program with the placement of students into a practicum, where they will achieve the practical experience they need to complete their degree.*
- 1.2.10 *Career Services. Supplier and its Subcontractors can support a Program in the development of career services resources and programming for students in the Program. This may include, but is not limited to, creating videos and/or other resources, and working with Program staff to translate in-person programming to an online environment.*
- 1.2.11 *Learning Stack/Tools. Supplier and its Subcontractors can integrate with University's existing systems to build an integrated learning stack, including the Learning Management System, synchronous video, plagiarism review, online proctoring, video management services, and other required tools, subject to University's approval.*
- 1.2.12 *Technology Integration. Supplier and its Subcontractors can work with University to ensure the integration of Subcontractors' technologies and services with University's technologies and services. The goal is to deliver a cohesive*

and successful Program. Marketing, recruiting, and the delivery of the Program will run on this platform, side by side with the normal University technology stack. It is the intent of the Parties that this stack, which Supplier will improve on an ongoing basis, will act as a sandbox for new technologies that may be useful to the University campus overall.

- 1.2.13 *Technical Support. Supplier can support faculty, staff, and students through hiring and managing Subcontractors to provide technical support. Technical support can include, but is not limited to: LMS functional support; video-conferencing support (e.g., Zoom); username assistance; video and/or audio troubleshooting; and general tech questions relevant to the online learning environment.*
- 1.2.14 *Analytics Dashboard. Supplier will provide University access to information in the form of reports that benchmark data including, but not limited to: marketing performance; website analytics; student academic engagement and performance; and student co-curricular engagement related to the Program. The reports will display data for all services for which Supplier has access to the relevant systems. Benchmarks will be established in consultation with the Program for courses and user engagement. Data shown on the reports will be updated daily. Supplier will employ what it considers to be generally accepted “best practices” in the collection and use of University’s data, but in all cases will comply with University’s data governance policies.*

1.3 *Obligations of University*

- 1.3.1 *Admissions. Admissions decisions are within the sole purview of University based on criteria established by University and consistent with any University, State, or accreditation regulations.*
- 1.3.2 *Financial Aid. University will be solely responsible for the administration of all financial aid programs; Supplier shall not be involved in any manner in the award or disbursement of financial assistance or perform any work related to any of University’s responsibilities related to financial aid.*
- 1.3.3 *Delivery of Degree. University is responsible for student education and evaluation, including assignments, exams, grading and grading policy, probation standards, and the awarding and recording of credits and degrees, credentials and/or certificates, and the discipline and/or dismissal of students.*
- 1.3.4 *Accrediting Agency Application Submission. University will be responsible for securing any accreditations, registrations and state and international authorization and licensure approvals with respect to the Programs as may be necessary to operate in any jurisdiction or to otherwise accomplish the activities set forth in the Agreement.*

- 1.3.5 *Faculty Hiring and Management.* University will hire and manage all faculty working with the Program.
- 1.3.6 *Student Academic Support.* University will provide academic support to all students in the Program, with support from Supplier, if included in agreed upon Program specifications.
- 1.3.7 *Job Placement.* University will provide career and job placement services to all students in the Program, with support from Supplier, if included in agreed upon Program specifications.
- 1.3.8 *Administrative Access.* To the extent required for Supplier to provide Services hereunder, University will provide Supplier and Subcontractors administrative access to its existing Student Information System (SIS), Customer Relationship Management System (CRM), Learning Management System (LMS), Identity Management Provider/System (IDP), the marketing website, and any other of University's systems required to create and manage the Programs and to inform the Analytics Dashboard. In connection with such access, University may require Supplier and Subcontractors to agree to additional systems access terms.
- 1.3.9 *Licenses.* To the extent that the Supplier is using University systems' to deliver the Service, the University agrees to obtain the necessary permits, licenses and similar authorizations to access those systems, as required by law.
- 1.3.10 *Relevant Program Information.* University will coordinate with Supplier to provide Supplier relevant information pertaining to classroom-based and online students' admissions, performance and post-graduation outcomes, as well as relevant faculty and staff information (subject to the requirements of the FERPA and other relevant laws and regulations), solely to be used by Supplier in connection with providing the Services.

1.4 *Subcontractors*

- 1.4.1 *Use of Subcontractors.* Supplier will source, vet and, create agreements with Subcontractors to provide services that conform to Supplier's best practices.
- 1.4.2 *Supplier Direct Services as a Subcontractor.* In certain circumstances, Supplier can provide Services in the areas described in Section 1 above more effectively and/or efficiently than a Subcontractor. In those events, Supplier will perform those additional Services. Since Supplier's performing of those Services are outside of Supplier's advisory and supervisory functions for which it receives University Fees, Program Fees, or Credit Fees (as defined in Exhibit B of this Agreement), Supplier will invoice for those additional Services as the Subcontractor of such Service.

2.0 **Changes, Alterations and Modifications to Services.** The University may at any time by a written order change the extent of the Services covered by this Agreement, the drawing, specifications or other description, or the time of completion. Promptly upon receipt of the details of any change, Supplier shall either advise the University that the change will not affect its costs, or furnish: (a) a breakdown of estimated cost and changes to the Financial Arrangement of Exhibit B resulting from the requested change and (b) a statement of any necessary changes in the time of completion. Supplier's failure to advise the University within ten (10) days of the effect of any change in cost or completion time shall constitute Supplier's consent to conform to the change without change to the Financial Arrangement, or without change in other terms and conditions of this Agreement. If the change causes a material increase or decrease in costs, then an equitable adjustment of the Financial Arrangement to be paid to Supplier shall promptly be negotiated by the University and Supplier and incorporated as an amendment to this Contract.

The University should not be able to unilaterally change the time of completion of services provided by Supplier under this Agreement. If the University wants to change the time of completion, we would like the parties to discuss and come to agreement on a reasonable new time of completion. We would also want to make sure we agree to the definition of material as it applies to an increase or decrease in costs.

3.0 **Reporting.**

3.1 In performing the Services under this Agreement, Supplier shall report to **XX**.

3.2 Reports Format. [Insert description of any required reports-Examples Below]

After the execution of this Agreement, Supplier will consult with the University for the purpose of designing financial and operating reports which can be generated periodically by Supplier's accounting system and operating systems and which are satisfactory to the University. These reports can be either printed documents or Excel spreadsheets. The Supplier will provide these reports at no cost to the University.

EXHIBIT B
FINANCIAL ARRANGEMENT
General Services

The University will pay fees to Supplier for Services performed under this Agreement as follows:

1.0 Supplier Fee.

For the fees listed in this Section, Supplier will provide its expertise and perform its duties as Program Services Advisor as set forth in Exhibit A. The fees indicated are Supplier's standard Service fees for that function and shall apply unless modified in a specific agreement for a particular Program:

- a. *\$12,000/month Service fee for University ("University Fee").*
- b. *\$6,000/month for each Program ("Program Fee").*
- c. *A cumulative fee for all credit hours taken by all students accessing any Program or portion of the Program during an academic year calculated as per the Program Credit Fees Chart below ("Credit Fees"):*

<i>Program Credit Fees Chart (Based on total University enrollment across all Programs)</i>	
<i>Credit Tier</i>	<i>Fee per Credit</i>
<i>For the first 10,000 credits</i>	<i>@\$68</i>
<i>Then, for the next 10,000 credits</i>	<i>@\$52</i>
<i>Then, for the next 10,000 credits</i>	<i>@\$36</i>
<i>Then, for the next 10,000 credits</i>	<i>@\$20</i>
<i>Then, for all credits thereafter</i>	<i>@\$4</i>

By way of clarification, if the cumulative total of all credits taken by all students accessing any Program during such academic year ("Total Credits") equals 9,500, the fee per credit will be equal to \$68 per credit or \$646,000. If the Total Credits is 26,000, the fee will be 10,000 times \$68 per credit (\$680,000) plus 10,000 times \$52 per credit (\$520,000) plus 6,000 times \$36 per credit (\$216,000) for a total of \$1,416,000.

Each of the University Fee and Program Fees (collectively, “Fixed Fees) and Credit Fees (together with “Fixed Fees,” “Supplier Fees”) will increase by 2.5% on each annual anniversary of the effective date hereof during the term of the Agreement.

1.1 Subcontractor Fees

- 1.1.1 *Each Subcontractor, including Supplier when acting as a Subcontractor, will charge such fees and expenses as set forth in its applicable subcontract (together, the “Subcontractor Fees”). Supplier will remit such payment to Subcontractor(s) subsequent to its receipt of such payment of Subcontractor Fees from University.*
- 1.1.2 *These Subcontractor Fees will be prorated for partial months as appropriate.*
- 1.1.3 *Any increases in Subcontractor Fees (e.g. anniversary increases) will be in accordance with the terms of the applicable subcontract and agreed to by the Parties in the applicable budget.*

2.0 Expenses.

- 2.1 Travel Expenses. Travel expenses must be itemized separately; actual and reasonable expenses according to the University policy as indicated in the Standard Practice Guide relating to travel expenses will be reimbursed with Supplier’s invoice. See website <http://www.finance.umich.edu/procurement/travelexpense>

Travel costs are estimated to be _____. Expenses in excess of this estimate require [prior] [written] approval from the University.

- 2.2 Other Expenses. All reimbursable expenses, such as photocopies, supplies, photography, communication expenses and reproduction shall be billed at cost.
- 2.3 University Expenses. The University will be responsible for the following expenses:
*Faculty reimbursement, for both building courses for the Program and for teaching courses.
University tax
Administrative oversight of the program (including technology oversight)
Licensing fees for any University system used to deliver the Program*

- 3.0 Invoicing. The invoice must detail the Services performed, the dates the Services were completed and shall detail expenses apart from the Supplier Fees. Any discounts, rebates or other credits and the basis and calculation for each should also be included. Supplier must submit to the University all invoices related to this Agreement within ninety (90) days from the date that Products are delivered or services rendered. The University is not obligated to pay any invoices submitted after this time frame.

We would want to change this to read:

- 3.1 *Fixed Fees* will be invoiced monthly.
 - 3.2 *Credit Fees* invoiced for each academic term will be calculated based on the cumulative total of all credit hours taken by all students accessing any Program through such academic term within such academic year after giving credit for all previous *Credit Fees* invoiced for such academic year. A reconciliation of *Credit Fees* invoiced will be done with the last *Credit Fees* invoice for the last academic term of each academic year. *Credit Fees* calculated by student enrollment will be invoiced the day after the add/drop deadline for each academic term.
 - 3.3 *Subcontractor Fees* will be invoiced monthly in advance for all Subcontractor services to be rendered during that month.
- 4.0 **Payment Terms**. Payment will be made within thirty (30) days after the University's receipt of an invoice from Supplier.
- 5.0 **Taxes**. The fees, expenses and costs payable under this Agreement include all applicable taxes and shall not be changed as the result of the Supplier's failure to include any applicable tax, or as a result of any change in the Supplier's tax liabilities.
- 6.0 **Withhold Payment**. The University, at its discretion, may withhold the whole or part of any payments to Supplier to the extent appropriate to set off University losses or costs to protect the University from loss, due to, but not limited to the following causes:
 - 6.1 Defective work not corrected.
 - 6.2 Damage to personnel or property of the University or third party caused by act, omission or negligence of Supplier, or its agents or employee.

We cannot agree to the University withholding payments to Supplier at its discretion. Before withholding any payment, we would like the University to notify Supplier of events necessitating such withholding and provide Supplier with proof of the amount of money required to set off losses or protect the University from loss.
- 7.0 **Discount/Rebate Information**. Supplier agrees to (a) fully and accurately report discounts and rebates to the University on the invoice, coupon or statement submitted to the University; (b) provide, upon the University's request, the documentation or assistance necessary to allow the University to meet its reporting obligations to the government; and (c) refrain from doing anything that would impede the University from meeting its reporting obligations.

EXHIBIT C
DATA PROTECTION

The University is committed to protecting its information and data from unauthorized use and disclosure. Protecting information assets is driven by a variety of considerations including legal, financial, compliance, and other business requirements. To this end, Supplier shall comply with the terms and conditions of this Data Protection Agreement (DPA) in its management and disclosure of University Data, as defined herein.

- 1.0 **Applicability to Other Agreements.** The University and Supplier acknowledge that there may be prior agreements executed between the parties (and their affiliates) and that there may be future agreements executed between the parties (and their affiliates) (referred to as "*Other Agreements*") that may contain confidentiality and security provisions of a similar nature as set forth in the DPA. The parties agree that, to the extent of any conflict between the DPA and the Other Agreements, the terms of the DPA shall control. The DPA terms and conditions shall be in addition to, and not in lieu of, any more stringent terms and conditions that may exist in the Other Agreements. The terms of this DPA shall only apply to Supplier's obligation to keep and safeguard University Data, and any requirements of University to keep confidential Supplier's information are or shall be addressed in the Other Agreements. The terms and conditions of this DPA shall apply to Supplier and all of its affiliates. Supplier represents that the individual signing below has the authorization to bind Supplier and its affiliates to this DPA.

- 2.0 **University Data** not protected under this DPA includes information or data that is publicly available or later becomes available other than through a breach of this DPA or Other Agreement, known to Supplier or its employees, subcontractors or agents prior to such disclosure other than from the University, is independently developed by Supplier or its employees, subcontractors or agents without access to or knowledge of the University Data, or subsequently obtained by Supplier or its employees, agents or representatives from a Third Party without obligations of confidentiality. The term "University Data" is any information or data that meet any of the following criteria:
 - 2.1 **Institutional Data** refers to any information or data that satisfies one or more of the following criteria:
 - 2.1.1 Relevant to planning, managing, operating, controlling, or auditing administrative functions of an administrative or academic unit of the University;
 - 2.1.2 Created, received, maintained or transmitted as a result of educational, clinical, research or patient care activities;
 - 2.1.3 Generally referenced or required for use by more than one organizational unit;
 - 2.1.4 Included in an official University administrative report;
 - 2.1.5 Used to derive information or a data element that meets the criteria above; and/or
 - 2.1.6 Generated by a University workforce member or agent using any of the above information or data.

 - 2.2 **Data Protected by Law** refers to any information or data that is protected by federal, state or local law, including, without limitation, financial information under the Gramm-Leach-Bliley Act ("GLBA"), student information under the Family Education Rights and Privacy Act ("FERPA"), individually identifiable health information under the

Health Insurance Portability and Accountability Act (“HIPAA”), and personally identifiable information under state security breach notification laws, as each are amended from time-to-time and as may be implemented by regulations, policies, edicts, opinions and practices.

- 2.3 **Marked or Labeled Data** refers to any information or data that is marked or labeled by the University as “confidential”, “proprietary” or any similar designation.
- 2.4 **Analytical Data** refers to any information or data that is collected, processed, or aggregated based upon the behavior of University-owned institutional data and is classified as sensitive.
- 2.5 **Sensitive Data** refers to any information or data whose unauthorized disclosure will or may have an adverse effect on the University’s reputation, resources, services or individuals.

3.0 Confidentiality and Data Security

- 3.1 **Duty to Protect University Data**. Supplier shall only use University Data as permitted by the Other Agreements, and shall not, directly or indirectly, disclose, copy, distribute, republish or allow any Third party to have access to any University Data, unless otherwise approved by University in writing. Supplier shall protect University Data in accordance with the terms of this DPA. In addition, Supplier represents warrants and covenants to University that it agrees that it complies with all applicable federal, state and local laws and regulations relating or pertaining to the use, disclosure, storage, handling and transmission of University Data. If Supplier has a need to disclose University Data to a Third Party, Supplier may disclose University Data to those Third Party vendors and consultants who have a need to know provided that such Third Party signs a confidentiality and non-disclosure agreement with substantially the same protections and restrictions as stated herein with such agreement naming the University as an intended third party beneficiary, and containing such other terms and conditions as reasonably requested by the University. Supplier may disclose University Data if so required by law (including court order or subpoena) in accordance with the procedures below.
- 3.2 **Data Security**
 - 3.2.1 **Duty to Protect University Data**. Supplier shall provide evidence that it has implemented and maintains a documented information security program to protect and safeguard University Data. The program shall include administrative, technical, and physical safeguards that utilize commercially available industry best practices, and meet or exceed the University’s security policies, procedures and requirements, and applicable state and federal laws and standards. Upon request, the provider shall provide additional documentation of the information security program.
 - 3.2.2 **Compliance with Personal Information Statutes**. Supplier acknowledges that University Data may include personal information covered by various state personal information statutes. Supplier shall ensure that the storage, handling and transmission of the University Data complies with the existing and future

- federal and state laws (collectively, “***Personal Information Statutes***”), of all personally-identifiable University Data.
- 3.2.3 **Notification of Suspected or Actual Breach.** If Supplier believes that Data Protected by Law has been subject to unauthorized access, Supplier shall provide written notice to the University immediately and in any event within twenty-four (24) hours by sending e-mail to security@umich.edu. If the University determines that actions must be taken to comply with Personal Information Statutes, Supplier shall fully cooperate with the University to achieve such compliance and if compliance is required due to a breach by Supplier of this DPA. Supplier shall reimburse University for all costs and damages associated with such breach and compliance.
- 3.3 **No Aggregation or De-Identification of Data.** University Data shall not be accessed or used by Supplier to create aggregated or de-identified data unless directed by University.
- We would like to discuss with you the intent of this section. Supplier provides a service to its clients whereby it uses non-personally identifiable information in its proprietary analytics tools to help Universities access its data in real-time, improving University decision-making in marketing, recruitment, academics and support.*
- Accordingly, if we are to provide this analytics service, we cannot agree to limit Supplier's ability to access or use University Data under this section to only when directed by the University.*
- 3.4 **Notice and Approval of Offshoring.** Supplier represents and warrants to University that Supplier shall not: (a) perform any of its obligation under any Other Agreement from locations or using employees, contractors and/or agents, situated outside the United States, or (b) directly or indirectly (including through the use of subcontractors) transmit any University Data outside the United States, nor will Supplier allow any University Data to be accessed by Supplier employees, contractors and/or agents from locations outside the United States without notifying and gaining the written approval of the University.
- 3.5 **Return or Destruction of University Data.** At any time and upon University’s written request, Supplier shall promptly return, within ten (10) business days, all originals and copies of University Data, whether in printed or electronic form, including any and all backups and archived data. In lieu of a return of University Data, with the University’s written consent, Supplier shall promptly destroy all originals and copies of University Data, whether in printed or electronic form, including any and all backups and archived data in accordance with industry standards and the federal government’s best practices.
- 3.6 **On-going Security Program Evaluation.** Upon the University’s written request, Supplier shall provide documentation on the current state of its security program.

Attachment C - Signature Page



Request for Proposal **RFP T-071618-01-DG** - Ross On-Line MBA

By virtue of submittal of a proposal, Supplier acknowledges:

- That all of the requirements of this RFP have been read and understood.
- That the Agreement has been read and understood.
- That compliance with the Specifications/Qualifications and Agreement and any applicable Supplemental Terms and Conditions will be assumed by the University if not otherwise noted in the submittal.
- That Supplier is not delinquent on the repayment of any Federal debt.
- That Supplier is in compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) regarding restrictions on lobbying.
- That Supplier is presently not debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from covered transactions by any Federal department or agency.
- Any responses, materials, correspondence, or documents provided to the University are subject to the State of Michigan Freedom of Information Act and may be released to third parties in compliance with the Act.
- By signing below the Supplier warrants that the information submitted is complete and factual.
- The individual signing below has authority to enter into this on behalf of Supplier.

CORPORATE NAME: Noodle Partners, Inc.

AUTHORIZED SIGNATURE:

A handwritten signature in black ink that appears to read "Scott H. Levine".

PRINT NAME: Scott H. Levine

TITLE: Senior Vice President of University Relations

DATE: July 27, 2018

ADDRESS: 860 Broadway, 6th Floor

CITY: New York **STATE:** NY

ZIP CODE: 10003 **PHONE #:** 404.217.1322

TOLL FREE #: N/A **FAX #:** 212.477.5169

EMAIL ADDRESS: slevine@noodle.com

NOTE: If the address to submit purchase orders, remit payment or send additional request for proposals is different from the above address, please indicate those addresses on a separate sheet and include with your response.



University of Michigan

Funding Method: **University Upfront Investment**
Summary for: **All Programs**
Column Grouping: **Year Starts at Contract Signing**

Noodle Partners Proforma

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>	<u>Year 7</u>
New Student Starts	0	120	135	145	160	175	177
Total Enrollment at Year End	0	115	237	364	439	480	505
Tuition, Net of Discount	\$ -	\$ 2,534,016	\$ 7,727,057	\$ 13,869,726	\$ 18,923,943	\$ 21,212,756	\$ 23,714,785
Noodle Management Fees							
Noodle Partners University Fee	144,000	147,600	151,290	155,072	158,949	162,923	166,996
Noodle Partners Program Fee	36,000	73,800	75,645	77,536	79,475	81,461	83,498
Noodle Partners per Credit Hour Fee	-	81,050	245,950	432,331	553,523	605,470	661,716
Noodle Management Fees	180,000	302,450	472,885	664,940	791,946	849,854	912,210
Noodle Provider Fees							
Program Marketing	1,190,712	1,724,166	2,148,423	2,397,518	2,689,940	2,898,357	2,936,811
Student Recruitment	516,417	689,718	875,712	948,159	1,059,925	1,164,538	1,155,513
Academic Technology & Support	31,042	38,207	53,009	70,098	84,132	90,718	97,846
Instructional Design & Course Development	150,000	389,500	462,275	538,445	485,678	271,538	278,326
Student Support	25,000	31,397	72,192	88,239	94,017	107,189	114,538
Career & Alumni Support	-	13,244	39,161	67,856	99,258	137,245	178,297
Noodle Bus and Other Fees	24,500	45,100	46,228	47,383	48,568	49,782	51,027
Noodle Provider Fees	1,937,671	2,931,331	3,696,999	4,157,698	4,561,517	4,719,368	4,812,357
University Expenses							
Personnel Expenses							
Faculty Expense - Course Design and Instruction	20,000	205,000	483,288	786,130	1,037,584	1,108,780	1,217,678
Support Staff Expense	37,500	38,438	39,398	40,383	41,393	42,428	43,489
Benefits and Taxes	9,375	45,484	114,912	190,475	258,706	287,802	315,292
Personnel Expenses	66,875	288,922	637,598	1,016,989	1,337,683	1,439,010	1,576,458
Other University Expenses							
University Tax	-	126,701	386,353	693,486	946,197	1,060,638	1,185,739
University Administrative Expenses	100,000	102,500	105,063	107,689	110,381	113,141	115,969
Other University Expenses	100,000	229,201	491,415	801,175	1,056,578	1,173,779	1,301,709
University Expenses	166,875	518,123	1,129,013	1,818,164	2,394,262	2,612,788	2,878,167
Net Income	\$ (2,284,546)	\$ (1,217,888)	\$ 2,428,160	\$ 7,228,924	\$ 11,176,218	\$ 13,030,746	\$ 15,112,051
Cumulative Net Income	\$ (2,284,546)	\$ (3,502,433)	\$ (1,074,273)	\$ 6,154,651	\$ 17,330,869	\$ 30,361,614	\$ 45,473,665



University of Michigan

Funding Method: **University Upfront Investment**
Summary for: **All Programs**
Column Grouping: **Year Starts at Contract Signing**

Traditional OPM Proforma

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>	<u>Year 6</u>	<u>Year 7</u>
New Student Starts	0	120	135	145	160	175	177
Total Enrollment at Year End	0	115	237	364	439	480	505
Tuition, Net of Discount	\$ - \$ 2,534,016	\$ 7,727,057	\$ 13,869,726	\$ 18,923,943	\$ 21,212,756	\$ 23,714,785	
OPM Revenue Share University Expenses	- 166,875	1,647,111 518,123	5,022,587 1,129,013	9,015,322 1,818,164	12,300,563 2,394,262	13,788,291 2,612,788	15,414,610 2,878,167
Net Income	\$ (166,875)	\$ 368,783	\$ 1,575,457	\$ 3,036,240	\$ 4,229,119	\$ 4,811,676	\$ 5,422,008
Cumulative Net Income	\$ (166,875)	\$ 201,908	\$ 1,777,365	\$ 4,813,605	\$ 9,042,723	\$ 13,854,399	\$ 19,276,407
Cumulative Net Income Noodle Partners	\$ (2,284,546)	\$ (3,502,433)	\$ (1,074,273)	\$ 6,154,651	\$ 17,330,869	\$ 30,361,614	\$ 45,473,665
Cumulative Net Income Traditional OPM	\$ (166,875)	\$ 201,908	\$ 1,777,365	\$ 4,813,605	\$ 9,042,723	\$ 13,854,399	\$ 19,276,407

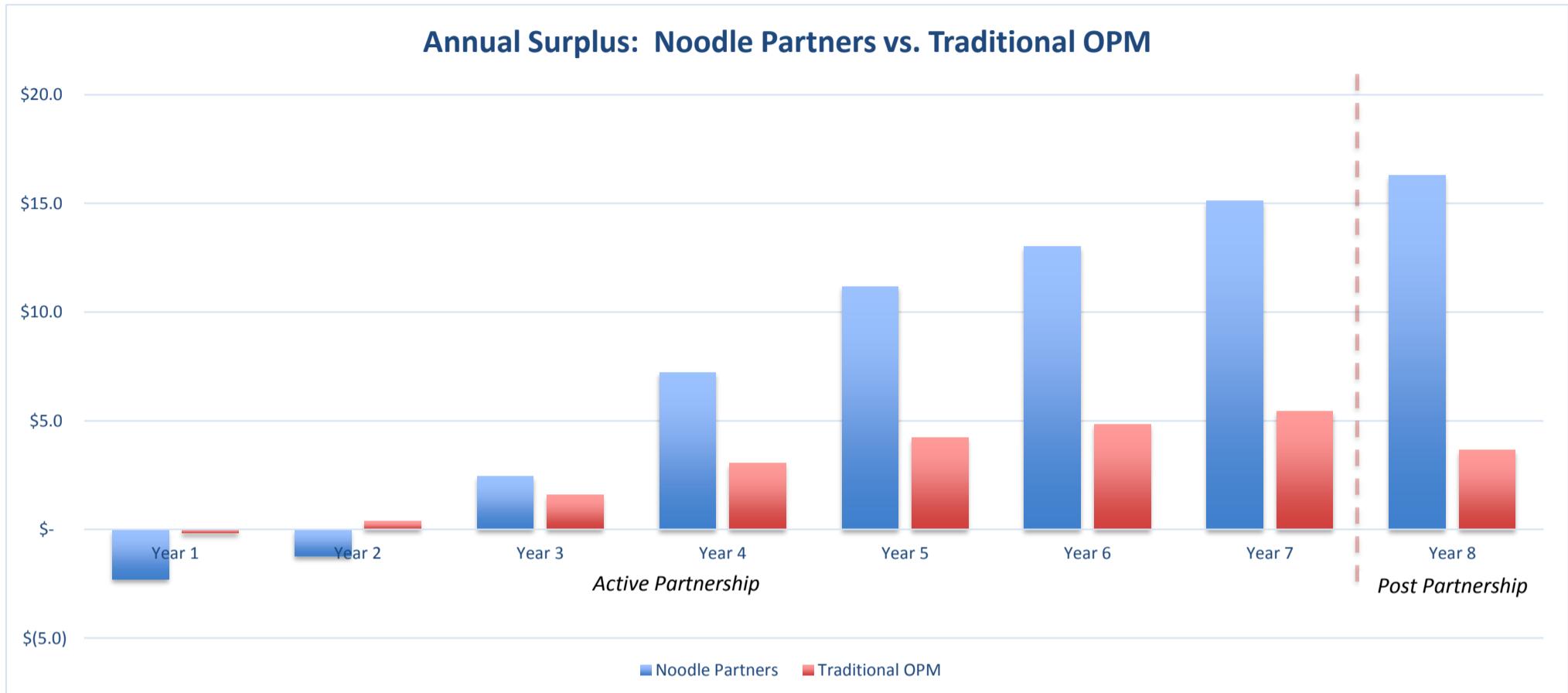
University of Michigan

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
New Students (Annual)	0	120	135	145	160	175	177	177	177	177
Estimated Tuition	\$ -	\$ 2,534,016	\$ 7,727,057	\$ 13,869,726	\$ 18,923,943	\$ 21,212,756	\$ 23,714,785	\$ 25,270,200	\$ 26,236,420	\$ 26,434,233
Cumulative Estimated Tuition	\$ -	\$ 2,534,016	\$ 10,261,073	\$ 24,130,799	\$ 43,054,743	\$ 64,267,499	\$ 87,982,284	\$ 113,252,483	\$ 139,488,904	\$ 165,923,136

University of Michigan Makes the Upfront Investment With Noodle Partners										
Provider Fees	\$ 1,937,671	\$ 2,931,331	\$ 3,696,999	\$ 4,157,698	\$ 4,561,517	\$ 4,719,368	\$ 4,812,357	\$ 4,964,296	\$ 5,051,274	\$ 5,282,601
Management Fees	\$ 180,000	\$ 302,450	\$ 472,885	\$ 664,940	\$ 791,946	\$ 849,854	\$ 912,210	\$ 953,522	\$ 981,901	\$ 993,652
OPM Cutover Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Revenue Share										
University Expenses	\$ 166,875	\$ 518,123	\$ 1,129,013	\$ 1,818,164	\$ 2,394,262	\$ 2,612,788	\$ 2,878,167	\$ 3,072,541	\$ 3,181,308	\$ 3,191,103
Total Expected Costs	\$ 2,284,546	\$ 3,751,904	\$ 5,298,897	\$ 6,640,802	\$ 7,747,726	\$ 8,182,010	\$ 8,602,734	\$ 8,990,359	\$ 9,214,483	\$ 9,467,356
Annual Expected Surplus	-\$ 2,284,546	-\$ 1,217,888	\$ 2,428,160	\$ 7,228,924	\$ 11,176,218	\$ 13,030,746	\$ 15,112,051	\$ 16,279,841	\$ 17,021,938	\$ 16,966,876
Cumulative Expected Surplus	-\$ 2,284,546	-\$ 3,502,433	-\$ 1,074,273	\$ 6,154,651	\$ 17,330,869	\$ 30,361,614	\$ 45,473,665	\$ 61,753,506	\$ 78,775,444	\$ 95,742,320

Comparative Financial Summary

University of Michigan



Cumulative Summary including Residual Payments with a Traditional OPM

	Noodle Partners	Traditional OPM
Tuition through year 7	\$87,982,284	\$87,982,284
Operating Expenses	<u>(\$42,508,618)</u>	<u>(\$68,705,876)</u>
Surplus through year 7	\$45,473,665	\$19,276,407
Tuition in year 8	\$25,270,200	\$25,270,200
Operating Expenses	<u>(\$8,990,359)</u>	<u>(\$8,990,359)</u>
Residual Payments		<u>(\$23,288,555)</u>
TOTAL Surplus	\$61,753,506	\$12,267,693
Lifetime Value of a Student	\$62,413	\$12,399

Key Assumptions

# of Programs	1
Annual New Enrollments at Scale	177
Average Tuition	\$114,461
Traditional OPM Rev Share	65%

	Noodle Partners	Best OPM	Average OPM
Marketing as % of Tuition	15%	12%	5%
Recruiting as % of Tuition	6%	4%	1%
Support cost per student	1%	4%	2%
Instructional Design (per new course)	\$60,000	\$40,000	\$10,000
Instructional Design (annual refresh)	\$10,000	\$10,000	\$3,000
Cost of OPM (as % of revenue)	23%	65%	50%

Comparative Financial Summary
University of Michigan

Annual Surplus: NP Temporary Revenue Share vs. Traditional OPM



Cumulative Summary including Residual Payments

	Noodle Partners	Traditional OPM
Tuition through year 7	\$87,982,284	\$87,982,284
Operating Expenses	<u>(\$43,771,763)</u>	<u>(\$68,705,876)</u>
Surplus through year 7	\$44,210,521	\$19,276,407
Tuition in year 8	\$25,270,200	\$25,270,200
Operating Expenses	<u>(\$8,990,359)</u>	<u>(\$8,990,359)</u>
Residual Payments		<u>(\$23,288,555)</u>
TOTAL Surplus	\$60,490,361	\$12,267,693
Lifetime Value of a Student	\$61,136	\$12,399

Key Assumptions

# of Programs	1
Annual New Enrollments at Scale	177
Average Tuition	\$114,461
OPM Rev Share	65%

	Noodle Partners	Best OPM	Average OPM
Marketing as % of Tuition	15%	12%	5%
Recruiting as % of Tuition	5%	4%	1%
Support cost per student	1%	4%	2%
Instructional Design (per new course)	\$60,000	\$40,000	\$10,000
Instructional Design (annual refresh)	\$10,000	\$10,000	\$3,000
Cost of OPM (as % of revenue)	24%	65%	50%

University/College Name University of Michigan

Noodle Partners Fees

Monthly University Fee

\$12,000

Monthly Fee Per Program

Program 1	\$6,000
Program 2	
Program 3	
Program 4	
Program 5	
Program 6	

Name of Program

MBA

Fees per Credit Hour

<u>Min Credits</u>	<u>Max Credits</u>	<u>Fee / Credit</u>
0	10,000	\$68
10,001	20,000	\$52
20,001	30,000	\$36
30,001	40,000	\$20
40,001	3,000,000	\$4

Traditional OPM Fees

Rev Share	65%
Year 8 Start Month	9/1/2025

Inflation Factors

Annual Tuition Inflation	3.00%
Annual Expense Inflation	2.50%

Noodle Partners Temporary Revenue Share

Interest Rate	12%
---------------	-----

Noodle Partners Temporary Revenue Share Rate	65%
--	-----

MBA

University

Default Values (if needed)

University of Michigan

PROGRAM ASSUMPTIONS

Partnership Details

Agreement Signed

9/1/2018

First Term for Students (Month)

9/1/2019

Program Details

Total Credits to Graduate

60

In-State vs. Out-of-State Distinction Needed?

Yes

% In-State (if applicable)

50%

In-State Tuition (if applicable)

\$2,121

Out-of-State Tuition (if applicable)

\$2,287

Average Discount Rate

4%

Average Credits per Course

3

Average Term Length (months)

4

Student Assumptions

Average Credits per Term (PT)

6

% PT Students

90%

Expected Graduation Rate

85%

of Terms to Defer FT

4

Enrollment Assumptions

Inaugural Start

20

Start 2

40

Start 3

60

Start 4

30

Start 5

45

Start 6

60

Start 7

40

Start 8

45

Start 9

60

Start 10

45

Start 11

50

Start 12

65

Start 13

50

Start 14

55

Start 15

70

AT SCALE

59

Terms by Program

FA19

SP20

SU20

FA20

SP21

SU21

FA21

SP22

SU22

FA22

SP23

SU23

FA23

SP24

SU24

UNIVERSITY ASSUMPTIONS

Faculty Expense Assumptions

Average Faculty Cost per Course Taught	\$10,000
Average Students per Course Taught	30
Faculty Relief per New Course Build(University Expense)	\$10,000
Administration Expenses	\$100,000
University Tax	5.0%

NOODLE STACK ASSUMPTIONS

Marketing

Marketing Months Prior to First Term	6
Marketing Start Month	3/1/2019

Recruiting

Enrollment Advising	Yes
---------------------	-----

Student Support

Student Services Stack	Yes
Practicum Placement	No

Immersion Assumptions

Annual Cost of Immersion - base	\$0
Annual Cost of Immersion - per student	\$0
Immersion Participation Rate	0%

Technology

Academic Stack	Yes
----------------	-----

Program Development

Average Media Allocation per Course - Build Cost	\$60,000
Annual Course Refresh	Yes
Pre-existing Courses that Require Annual Maintenance	0
Orientation Course for SMEs	Yes
Orientation Course for Faculty	Yes
Orientation Course for Students	Yes

Custom University Expenses		FTE	Salary \$	Ratio per Student	Ratio per Faculty
Program Manager	Yes	0.50	\$75,000		
Admissions/Financial Aid	No	0.50	\$55,000	300	
Faculty Mgmt/On-boarding	No	0.50	\$55,000		100
Academic Advisors	No	1.00	\$60,000	100	
Student Support	No	0.50	\$75,000	300	
Career Counselors	No	1.00	\$55,000	150	
Student Engagement Counselors	No	0.50	\$55,000	300	
Field Placement Counselor	No	0.50	\$55,000	300	
Program Administration	No	0.50	\$55,000	300	
Fringe Benefits and Taxes			25%		

Marketing Pipeline	MBA
Cost Per Lead	\$ 120.00
Started Applications	9.0%
Submitted Applications	68%
Completed Applications	70%
Lead to Applicant Rate	4.3%
Admit Rate	30%
Yield Rate	75%
Enrolled Students	0.964%
Leads per 1 Student Enrolled	104
Media Cost per Student	\$ 12,449
Media Cost as % of Tuition	9.4%
Recruiting Cost per Student	\$ 5,706
Recruiting Cost as % of Tuition	4.3%
Total Marketing and Recruiting per Student (Total Cost)	\$ 18,155
Total Marketing and Recruiting per Student (% of Tuition)	13.7%

	University of Michigan - RFP T-071618-01-DG - Ross On-Line MBA			
	Attachment A - Supplier's Question Form			
	<p>Please use the area below to submit your questions, please note that questions not submitted in the specified format are not guaranteed a response.</p> <p>Note that the submission due date is 07/23/2018 2:00 pm.</p> <p>General Guidelines:</p> <ul style="list-style-type: none"> - Each individual question should be submitted on a separate row - Please be sure to complete all columns for each question 			
Company Name	Subject / Document	Reference Section	Inquiry	U of M Response
Vendor X	Attachment C -Questionnaire	Account Management	Please enter inquiry in this area	U of M to enter a response in this area
Noodle Partners	RFP	4.1 Scope of Opportunity	Are the enrollments listed in section 4.1 new annual admits, admits per cohort or total enrolled students?	Admits per cohort. 2-3 cohorts per year.
Noodle Partners	RFP	4.1 Scope of Opportunity	What is the Ross student administration/life?	This is composed of a Managing Director, Admissions Staff of 2, a program manager. Ross regards this as a high touch program. The staff knows all of the students personally. Students are not admitted without an interview by the administration. Ross' main concern with student life is to foster a close-knit community of the online students: students must know each other, students must know the Ross administration, and students must know faculty.
Noodle Partners	RFP	4.1 Scope of Opportunity	Can we receive a copy of Michigan's ADA policy?	
Noodle Partners	RFP	4.1 Scope of Opportunity	Can you confirm that UM uses Canvas as its LMS and plans on continuing to use Canvas?	Yes and we are open to other LMS, as well.
Noodle Partners	RFP	4.1 Scope of Opportunity	What video streaming service does UM use?	Kaltura.
Noodle Partners	RFP	4.1 Scope of Opportunity	We assume that student applicant vetting service would be part of enrollment services, is that accurate?	We assume that Ross will be vetting applications. To Ross' this means reviewing test scores, reading applications, interviewing applicants. If application of viable candidates should exceed 750, Ross would consider outsourcing part of the applicant vetting service. Ross' considers a viable candidate some mix of GMAT score over 550/GRE 150 each section, work experience of 2 years or greater, GPA greater than 2.4.
Noodle Partners	RFP	4.1 Scope of Opportunity	Is UM wedded to Slack or could another live chat tool be considered?	No, UM is not wedded to Slack. Another live chat tool could be considered.
Noodle Partners	RFP	4.1 Scope of Opportunity	Is the repository where videos can be searched and selected a la carte, with different permission levels a system that UM has or one you want the provider to offer? Is it correct to assume searching would be limited to students, faculty, and administrators?	Kaltura.
Noodle Partners	RFP	4.2 Requirements and Specification	We notice the relative absence of questions about recruitment/enrollment services, instructional design support, faculty support or student support. We are assuming that is because the previous RFI addressed those. Please clarify that we should address these core functional areas in our response.	Yes, please address these core function issues in the response.
Noodle Partners	RFP	4.2 Requirements and Specification	Is it a fair assumption that the provider will be given access to the marketing efforts used by the ground-based program to ensure efforts are additive?	Yes.
Noodle Partners	RFP	General	The RFP asks for "most recent industry analyst reports about your firm's products and services." We don't have this type of information available. We would be happy to include press releases announcing our university partners, but otherwise, this type of information simply doesn't exist. Could you please clarify what you're hoping to see?	Has Noodle been included in any Gartner reports or something similar? Are there any industry reports where you are compared to your peers?
Noodle Partners	Attachment B - GSA-DPA	2	Section 2.0 of the Agreement states "time is of the essence in this Agreement." Could you please clarify this statement and advise to which provisions you would really like this to apply?	We are open to discussions on this as part of contract negotiations. Please note your comments in Sec 7 of your response.
Noodle Partners	Attachment B - GSA-DPA	14.2	We would like clarification on section 14.2. Our model is based on passing through expenses to the University, which is how we keep our overall costs and fees so low.	(I do not see section 14.2) Ross' understands the Noodle cost structure as a pass-through model.
Noodle Partners	Attachment B - GSA-DPA	Exhibit C - Section 3.3	We would like to discuss with you the intent of Exhibit C, section 3.3. Supplier provides a service to its clients where it uses non-personally identifiable information in its proprietary analytics tools to help Universities access its data in real-time, improving University decision-making in marketing, recruitment, academics and support.	We are open to discussions on this as part of contract negotiations. Please note your comments in Sec 7 of your response.
Noodle Partners	RFP	9	The existing categories in the RFP that describe costs are misaligned with the unique nuances of an Online Program Management (OPM) partnership. Presenting costs in such a way would actually be counterproductive, as such granular details as hours/rates for a digital marketing firm would obscure the actual cost. Because we believe in full transparency, and want the University of Michigan to have a concise and accurate picture of the costs related to taking the program online, we request the ability to provide a pro forma that outlines the costs the University of Michigan can expect to bear. Is this acceptable?	Yes, this is acceptable.
Noodle Partners	Attachment B - GSA-DPA	Exhibit B - 1.0 - Supplier Fee	Section 1.0 of Exhibit B (Supplier Fee) asks us to paste in financial arrangements. We're requesting the ability to submit our detailed proforma instead. Is this acceptable?	You can provide this in any format but we will need to clearly define the payment structure as part of this Exhibit.
Noodle Partners	Attachment B - GSA-DPA	Exhibit B - sections 3.0 & 4.0	Our innovative business model is different from other OPMs. As such, our preferred invoicing and payment methodologies diverge from those of our competitors and from what you've outlined in 3.0 and 4.0 of Exhibit B. Our model leverages the expertise of several subcontractors. Normally, we'd bill in advance in order to have the funds available to pay our subcontractors. The terms listed do not align with this methodology. Is there any flexibility around this?	We generally do not agree to pay for any product or service which is not already rendered. You can invoice us as often as needed but only for services provided.



Response to RFP T-071618-01-DG

Ross On-Line MBA

University of Michigan

July 27, 2018

Scott H. Levine, PhD
Senior Vice President of University Relations
Noodle Partners
Phone: 404.217.1322
Email: slevine@noodle.com

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Attachment B: Exceptions to the University's Terms and Conditions

Attachment C: Signature Page

Attachment D: Pro Forma



July 27, 2018

Dave Gerstler
Senior Procurement Agent
University of Michigan, Procurement Services
3003 S. State Street, 7071 Wolverine Tower
Ann Arbor, MI 48109

Dave:

Noodle Partners, Inc., a professional services corporation located at 860 Broadway, Sixth Floor, New York, NY 10003, is delighted to respond to the University of Michigan RFP T-071618-01-DG - Ross On-Line MBA. The primary contact is Scott Levine, Senior Vice President of University Relations: slevine@noodle.com, 404.217.1322. Noodle Partners' response to this RFP encompasses core service areas for the On-Line MBA including digital marketing, recruitment, instructional design, student support, and technology integration. We understand the scope of the RFP, and look forward to the possibility of helping the Ross School of Business build the country's best Part-Time On-Line MBA.

Founded in 2014 by leading higher education entrepreneur John Katzman, Noodle Partners has become the fastest-growing Online Program Manager (OPM) in the country, working with leading institutions including American, Tulane, Virginia Commonwealth, and Wake Forest Universities, Boston and Mills Colleges, as well as the University of Tennessee Haslam College of Business. We are lowering the cost of higher education by helping these great institutions cost-effectively build high-quality, in-demand On-Line programs in a wide range of academic disciplines, from supply chain management and social work to teaching and business analytics.

In the pages that follow, we outline our approach to building the country's best Part-Time On-Line MBA for the Ross School of Business, following the outline set forth in the above-referenced RFP. This response is valid for a period of 120 days from the date of submission, July 27, 2018.

With many thanks,

A handwritten signature in black ink that reads "Scott Levine". The signature is fluid and cursive, with "Scott" on the top line and "Levine" on the bottom line.

Scott H. Levine, PhD
Senior Vice President of University Relations
Noodle Partners
slevine@noodle.com, 404.217.1322

1. Executive Summary

Noodle Partners is the right option for the University of Michigan's Ross School of Business (Ross) to build a world-class portfolio of On-Line and hybrid programs. We are the fastest-growing OPM firm for good reason: we never forsake quality for quantity, our business model amasses the best providers in the country, and we are committed to helping lower the cost of higher education. Below we offer additional information about why we're the ideal fit for Ross.

1.1. Key Differentiators

Noodle Partners is unique among Online Program Management firms in key meaningful ways:

1. We are paid by a series of modest fees instead of taking a percentage of tuition revenue. In addition to dramatically lowering (often halving) the cost of a traditional OPM.
2. We ask for a three-year contract, renewable thereafter; traditional OPMs ask for seven- or even ten-year contracts that virtually guarantee poor choices and sub-par performance.
3. Noodle Partners has curated an ecosystem of pre-vetted providers in the core functions of marketing, recruitment, instructional design, and student support who we manage on Ross' behalf. We manage these providers to exacting performance standards.
4. We commit to hire a locally based general manager (GM) to manage the day-to-day relationship.
5. We coalesce, analyze, and share performance data via real-time analytics dashboards, giving Ross leaders immediate insight into performance at any given time.

1.2. Scope of Requirements

Beginning with responding to the initial RFI and meeting with UM leaders in February 2018, Noodle Partners has developed a clear understanding of the goals for the Ross On-Line MBA. We met with Ross on May 29, 2018 and again on June 14, 2018 to refine our understanding and approach. This proposal and the options we've presented will help Ross build the best On-Line MBA, setting the stage and processes for additional world-class online programs including specialty Masters and executive education.

1.3. Similar Higher Education Clients

As we detail in Section 4.3, Noodle Partners works exclusively with higher education. The University of Michigan (UM) is in a class by itself, but our work with leading institutions such as Tulane, Wake Forest, Boston College and the University of Tennessee gives us the experience to

drive UM to—and beyond—its goals. We offer the following two references, each of whom oversee fully online graduate degree programs:

1. Rick Matasar, SVP for Strategic Initiatives, Tulane University, rmatasar@tulane.edu, 504.314.7611
2. Julie Sara Boyd, Associate Dean, American University School of Education, jboyd@american.edu, 202.885.3727

1.4. High-Level Execution Plan

We have launched or are in the process of launching programs with 10 universities. Below, we offer a high-level execution plan for launching the Ross On-Line MBA for the Fall 2019 semester. Please see Section 7.0 (Project Timelines) for more detailed information.



1.5. Risk Management Considerations

Noodle Partners has ample experience launching and managing world-class programs, from which we've drawn the following considerations (also reflected in the Comprehensive List of Assumptions in Section 3):

- Authorization and Accreditation: Obtaining approvals to offer the On-Line MBA may require advanced planning. Noodle Partners will work with UM/Ross leaders to obtain State Operating Authority and to work with AACSB as needed.
- Faculty Support: While we've met with many Ross faculty who are excited and engaged, others need to see the value in going online. We will provide the necessary support and training for faculty to feel successful, competent, and comfortable in an online setting.
- Coordination with UM and Ross teams: We need to coordinate within and beyond Ross on technology integrations, marketing alignment, approvals, admissions decisions,

financial aid decisions, and student affairs to ensure that students have the world-class experience befitting the Ross brand.

- Adjusting to an accelerated timeline: Online programs require a different cadence and timeline than do ground-based programs. Some processes may need to be adjusted to meet the expectations of (and competition for) online students, e.g., admissions decisions should be made within five days of receipt of the completed application and financial aid decisions should be made and communicated to students within a week.

1.6. Cost by Service Type

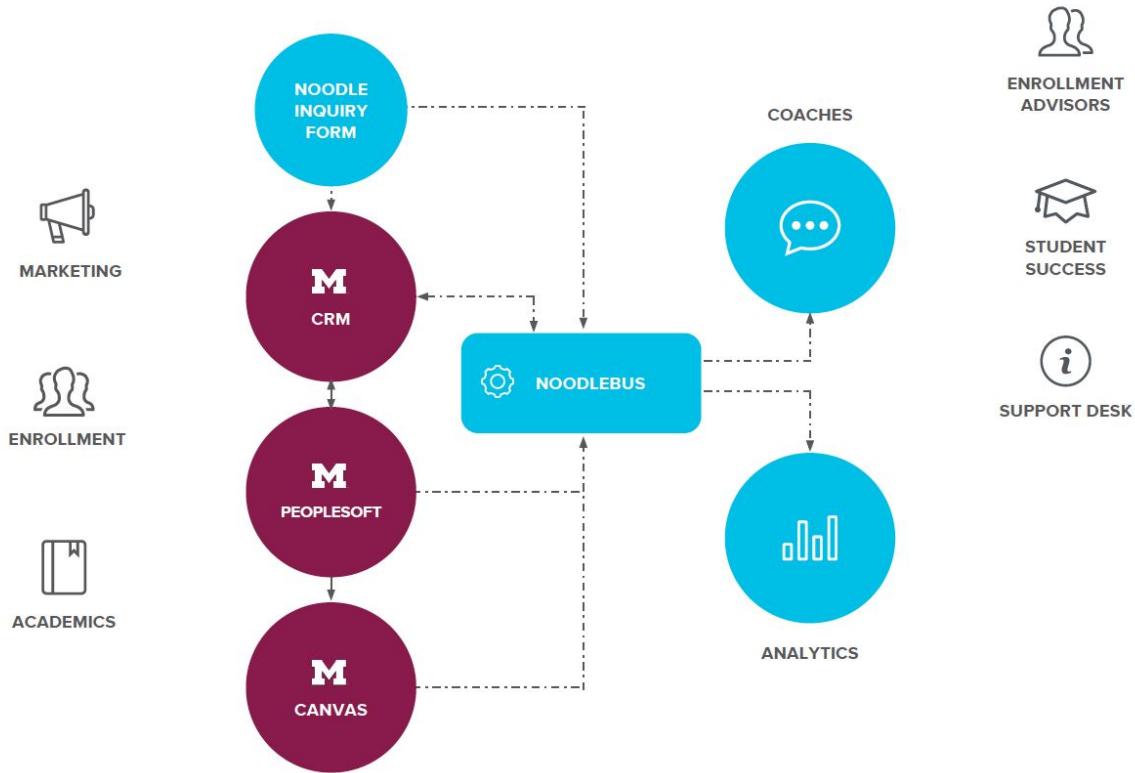
See Attachment D for a detailed breakdown of costs. Because of the unique nature of Online Program Management relationships and Noodle Partners' model of working with external providers, there is no simple way to list costs. We attempt to include every conceivable cost in the Pro Forma offered as Attachment D, notably in the tab titled "Program Provider Assumptions". Noodle Partners fees are listed in the tab titled "Program Manager Fees".

1.7. Values and Outcomes Delivered

Noodle Partners will deliver a unique On-Line MBA befitting Ross's reputation as a world-class business school. Working with faculty and administrators, we will build captivating courses that engage and delight adult learners and nurture them through their time at Ross until (and after) graduation. In so doing, we'll jointly craft an execution architecture that can be used for future online offerings including specialty Masters programs and executive education.

2. Scope of Proposed Solution

Harnessing Ross' reputation as the seventh-best business school (per US News & World Report) and internal expertise, Noodle Partners' experienced staff, and the power of best-in-class providers, we will build a premium On-Line MBA that equals the quality of the existing on-ground MBA. To do so cost effectively, without forsaking the quality for which Ross is known, we'll start with a multi-channel digital marketing effort (see following sections) to generate qualified leads. As each lead becomes a prospect, he or she will receive immediate contact from a recruitment center staffed by advisors who understand the value proposition of the On-Line MBA. (If a prospect ultimately chooses the on-ground MBA, we will make a warm transfer to the Ross admissions team.) Concurrently, instructional designers, under the guidance of our in-house chief academic officer, will work with faculty to build engaging digital courses that deploy technology to enhance the student experience. A tech integration team comprised of a solutions architect, designers, developers and a project manager will connect the University's legacy systems enabling seamless transfer of the data needed to manage the entire online learning experience. The image on the following page offers a thumbnail sketch of this architecture.



The resulting data will populate analytics dashboards that provide insight into marketing and enrollment (as well as learning) performance so that, at any time, Ross leaders can gauge performance against goals. In addition, access to real-time data and a local general manager essentially eliminate the need for status reports: we know at any given moment, on any given day, how we are progressing and where we need to make adjustments. Finally, we will conduct quarterly reviews with a steering committee comprised of Ross leaders and Noodle Partners leaders to monitor short-and long-term performance, suggest adjustments as needed, and explore new online opportunities.

2.1. Marketing and Enrollment

Noodle Partners deploys a multi-channel marketing approach consisting of digital advertising, nurture and content marketing, strategic partnerships, syndicated press, and interactive webinars to engage prospective students. Although the marketing funnel theory (more leads = more students) generally applies, our goal is to generate *quality* leads from *qualified* prospects based on a variety of admissions criteria including geographic location, undergraduate GPA, standardized test scores, and others that we mutually agree upon. We also focus heavily on those leads which are most likely to convert through the admissions funnel, enroll, and succeed. Ultimately, this strategy lowers marketing costs, increases yield, and improves efficiency.

In an increasingly competitive ad space, especially for the MBA market, success comes from leveraging smart tools and quantitative analytics to discover clusters of prospective students at

optimal pricing. Noodle and our marketing providers deploy a program-specific, bespoke approach that allows ad buyers and content creators to “day trade” audience data as they target and find prospective students. We study data-derived audience cohorts and quickly trade, segment, and purge data to find optimal conversion paths—including digital ads, press, affiliates, and content syndication. At all times, we study and test these groups to learn their behavior and, ultimately, to deliver higher rates of inquiries and stronger lead-to-prospect conversion.

Marketing and Enrollment Goals and Activities

Marketing goals are based upon our enrollment projection algorithm which, in turn, is based on the enrollment goals set forth in the RFP and addressed in the Pro Forma provided (see Attachment D). We leverage and account for several metrics to determine enrollment projections including job growth, job vacancies, wages and salary growth, degree conferral growth, price elasticity of degree demand, strength of the competitive landscape, university brand strength, cost of marketing, and several other factors. Once enrollment targets are established, Noodle Partners creates specific top-of-funnel inquiry goals and marketing budgets to fill a cohort. Once a marketing target converts to an inquiry, he or she is immediately contacted by an enrollment advisor via phone, text, chat, or email and prompted to begin the application process. Our goal is to complement, not replace, the fine work the Ross marketing team does every day, and we will work closely with leaders of that team to ensure

Reputation and Awareness Building

Ross is known as a top-10 business school, but not as an online destination. Noodle Partners will change this by creating an awareness campaign that capitalizes on its stellar reputation. We strictly follow, and carefully apply Ross brand guidelines to build awareness with potential students who may prefer or require online learning. One of the key factors is learning where prospective students consume news, leisure reading, podcasts, and entertainment. With these insights, we work to deploy relevant and targeted PR placements in which faculty discuss current events and syndicate approved faculty content.

Lead Generation

Noodle Partners deploys multiple lead-generation efforts to deliver high-quality leads via organic content, SEM, and affiliate marketing:

- **Organic lead generation** begins with building a brand-compliant microsite that is populated with program information, course overview, faculty information, tuition, and heavily syndicated .edu content. The site is optimized for search engine algorithms to rank high on search page results. Syndicated content and keyword optimization help the microsite rank high, and the site is continually updated and tested to deliver a best-in-class on-site experience. We consistently use A/B testing to tweak aspects of the microsite to drive conversion.

- **Search Engine Marketing**, or paid advertising, while obviously more costly, is an integral part of our marketing effort. Noodle Partners' team of expert ad buyers deploys programmatic display advertising, paid search, social media advertising, and other channels to target prospects with creatively optimized communications that prompt the prospect to click on the ad. The ads will drive the user to either a native form within that platform or to an A/B tested landing page that allows the user to quickly fill out a lead form.
- **Affiliate Marketing** also help drive inquiries. Several resources are deployed in these native environments where degree seekers are learning about and discovering the best potential program for their personal academic goals. We work closely with our affiliates to help them understand and target qualified individuals. Within each platform, we integrate a lead form that is linked to the CRM so that enrollment advisors can quickly contact these requests and assist with their application and submission.

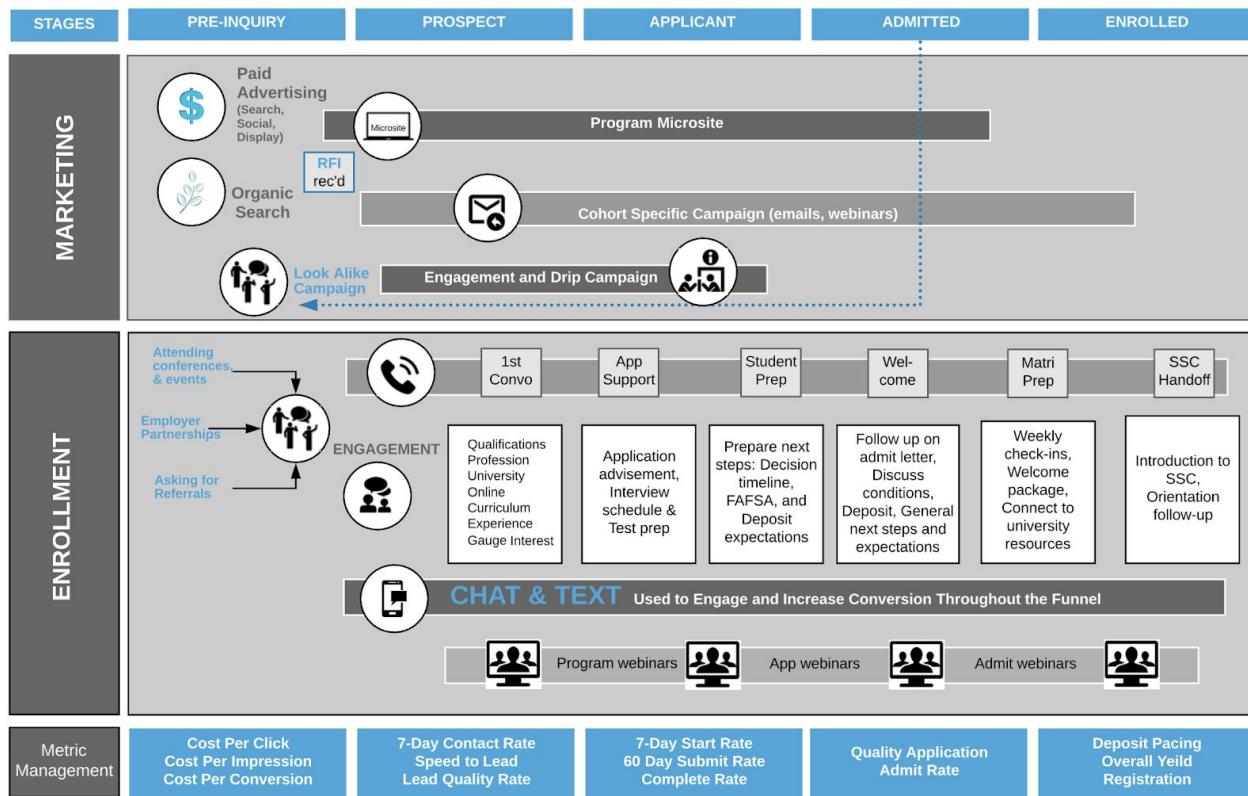
We take every precaution avoid duplication. Each lead for any MBA program, regardless of delivery modality, is expensive. We will work cooperatively to avoid buying duplicate leads, and craft a referral system whereby prospects who originate as on-ground leads learn about the On-Line MBA option and, conversely, Noodle-generated leads who express an interest in the on-ground MBA (full-time, evening) receive a warm handoff to a Ross enrollment expert. We address the need to work with in-house Ross marketers to avoid duplication in the Comprehensive List of Assumptions in Section 3.

Admitted Candidate Yield

Upon being admitted to the program, the Enrollment Advisor (EA) calls to welcome the student into the program, explain next steps, and send a congratulatory email linked to a welcome site. EAs make weekly calls to ensure that the following steps are taken: paying the deposit, completing the FAFSA, signing up for orientation, introducing the Student Success Coach, and giving registration reminders. Newly admitted students also receive a Welcome Package and invitation to an Admitted Student Webinar.

Student Journey Development

The following image neatly summarizes the journey from initial lead to enrolled student.



2.2. Features, Tools & Support

To create a state-of-the-art digital learning experience, Noodle Partners bolsters the standard experience of the Learning Management System with supplemental tools integrated to create a rich Virtual Campus experience that is elegant, intuitive, and engaging. The “Noodle Stack” is a collection of widely available technologies that have been uniquely integrated into a cohesive learning experience. By leveraging the R&D budgets of innovative and well-funded EdTech providers, Noodle is able to quickly adapt and incorporate the latest breakthroughs in learning science into the Stack. While the Noodle Stack is designed to meet the specific needs of each online student, it is also a living sandbox to incubate best practices across the university, both online and on ground.

Features

The Noodle Stack encompasses all of the core features required for synchronous and asynchronous course delivery, as well as ancillary functions to enrich the experience. While the

Noodle Stack consists of technologies available broadly in the market, in many cases Noodle Partners has worked directly with the providers to create custom integrations with other products in our stack, significantly improving the student experience and learning outcomes. We commission robust learning simulations that can be shared across campus for multiple use cases. We deploy video storage, content management, and authoring tools so valuable learning content—text, video, animations, case studies—can be discoverable by faculty and repurposed for other courses and, in theory, across other programs in the Ross School of Business.

Tools

In addition to the standard features of the Virtual Campus (LMS), Noodle Partners supports live video classroom delivery, a community hub for collaborative learning, a virtual simulation engine, proctoring software, plagiarism software, a content management system, an advanced authoring tool, video storage, a 24/7 helpdesk, retention software, mentoring, career advising, and networking. These features themselves are powerful, but our ability to help faculty members artfully weave them into their pedagogical approach is what will make the Ross On-Line MBA a unique and rewarding experience for students and faculty. We are constantly evaluating new tools and providers for technologies that will enhance the learning experience, both within and outside the virtual classroom to build camaraderie, networking, and alumni relations.

Support

Noodle Partners is committed to building the best Part-Time On-Line MBA possible and to supporting Ross in the core areas of marketing, recruitment, instructional design, and student support. We accomplish this in numerous ways, not the least of which is by providing a local general manager (GM) whose sole responsibility is to ensure a successful effort. The GM will be empowered to make decisions quickly to benefit the program and the overall quality of each course. Supporting the GM is a senior leadership team dedicated to meeting our shared goals. For more information on the leadership team, please see Section 4.2.

3. Comprehensive List of Assumptions

Noodle Partners assumes that we and the providers we source on Ross' behalf will have the following to meet the scope of services described in this proposal:

- Access to the CRM, SIS, and LMS to extract data for analytics purposes
- Awareness of the marketing initiatives used for the ground-based program
- Coordination with Ross marketers to avoid buying duplicate leads
- A process for warm handoffs for Noodle-generated leads that express interest in ground programs (and for on-ground leads expressing an interest in the On-Line MBA)

- Access to the University's visual and branding standards
- Access to Ross faculty in order to build a world-class program in a timely manner
- Access to historical enrollment data and student personas to craft marketing materials
- IT access to create subdomains for program-related microsites
- Access to practitioners in admissions, financial aid, registrar, and other ancillary offices that play an integral role in student success
- Lists of Ross/UM practitioners in these functions and contact information for each
- Five-day turnaround for admission decisions on completed applications
- Timely decisions on financial aid packages for accepted students (ideally as part of the offer of admission)
- Access to Ross leaders to review and choose providers or, alternatively, the approval to choose providers from our ecosystem that we believe will be the best fit for Ross
- The ability to meet with key leaders on a quarterly basis to review past performance and plan for future cohorts
- Ross/UM support for any concerns that arise regarding State Operating Authority or accreditation (including AACSB and the Higher Learning Commission)
- Access to Ross faculty for digital public relations (optional)
- Access to Ross alumni for whom the On-Line MBA may be of interest

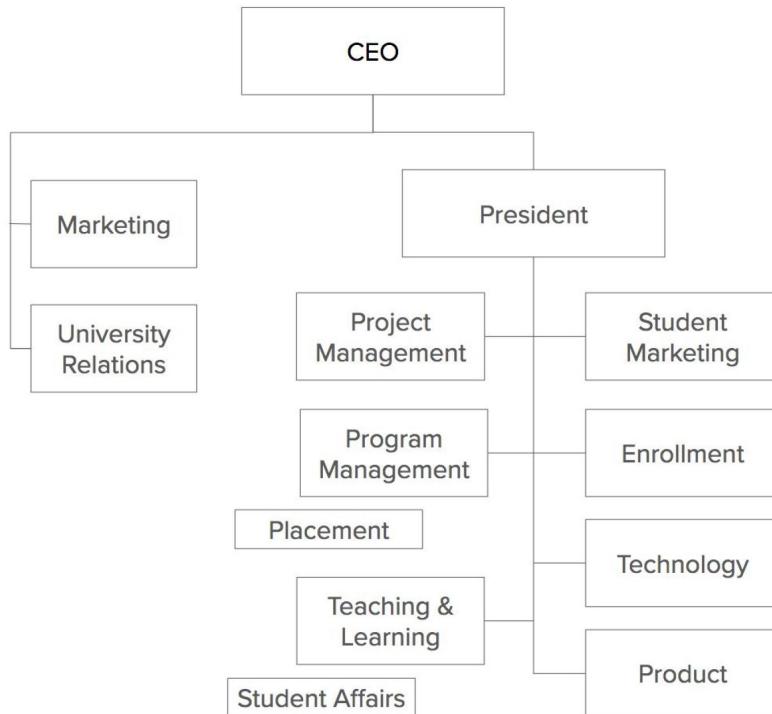
4. Company Background/Customer List

4.1. Years in Business

Noodle Partners was founded in 2014 as a new kind of Online Program Manager for a new era of agility and responsiveness. The traditional OPM model was right for 2008, but makes no financial sense in 2018, nor does the revenue-share/walled garden approach. Our CEO, John Katzman, founded The Princeton Review and grew it into a leading college search organization, after which he founded a leading OPM firm. Noodle Partners is now the fastest-growing OPM and is on track to work with 20 universities by the end of the year.

4.2. Company Size & Organizational Structure

We currently have 62 full-time staff members, the majority of whom are located in New York. The rest of our team is dispersed nationally, with clusters in Boston, Denver, Los Angeles, and DC. Our Director of Solution Architecture, a UM grad, lives in Ann Arbor. The organizational chart below details our structure, followed by links to bios on our senior leadership team.



Our leadership team includes the following:

1. [John Katzman](#), CEO
2. [Keri Hoyt](#), President
3. [Melora Sundt](#), Chief Academic Officer
4. [Jarrod Jordan](#), Chief Marketing Officer
5. [Feather de la Mata](#), VP of Recruitment
6. [Stephen Green](#), Chief Program Officer
7. [Alan Mlynek](#), Director of Solutions Architecture
8. TBD, General Manager: Noodle Partners will hire a UM-specific GM to manage the day-to-day functions required to build a successful Ross On-Line MBA

Noodle Partners is unique in the OPM space for many reasons, including the way we provide services to universities in marketing, recruitment, instructional design, and student support. While we employ senior leaders in each of these areas, the day-to-day work is done by pre-vetted, best-in-class providers in our ecosystem. By tapping into these providers—and aggressively managing them on your behalf—we provide a level of cutting-edge service that no OPM can match. And because these providers vie to be part of our ecosystem, we negotiate most-favored-nation pricing helping to lower costs.

4.3. Years of Experience with Different Types of Clients

In under four years, we've built an impressive client list that includes flagship public universities, respected private institutions, and the country's leading higher-education association, as seen in the logos below:



We will announce several new university partners in the next 60 days, including a private university in Texas and public universities in California, Georgia, and Virginia. We would be delighted to add Ross to our list of partners. We work exclusively in higher education; there are no government or commercial clients in our portfolio.

4.4. Industry Analyst Reports

There are currently no industry analyst reports for Noodle Partners.

4.5. Legal Actions

There are no lawsuits, legal actions, or government investigations against Noodle Partners.

5. Supplier Code of Conduct

Noodle Partners has read and agrees to comply with the Code of Conduct for UM Vendors published at http://procurement.umich.edu/sites/default/files/code_of_conduct.pdf.

6. Supplier Relationships or Potential Conflicts with the University

Upon reviewing UM's Conflict of Interest policy located at <http://procurement.umich.edu/buying/process-policies/conflict-interest>, we find no violations or relationships that would be in violation of said policy.

7. Project Timelines

Assuming we are in contractual agreement by September 1, 2018, there is ample time to build the high-quality courses Ross seeks and launch the On-Line MBA for the Fall 2019 cohort. The following tables offer more granular information by core service area.

Marketing + Recruiting

Complete 5 months from launch	Complete 4 months from launch	Complete 3 months from launch	Complete 2 months from launch	Complete 1 month from launch
<input type="checkbox"/> Design program identity	<input type="checkbox"/> Work through training plans and contact strategies	<input type="checkbox"/> Review initial performance data	<input type="checkbox"/> Select future cohort targets	<input type="checkbox"/> Launch next campaign cohort
<input type="checkbox"/> Determine student profile and pathways	<input type="checkbox"/> Ensure ICPA compliance, launch marketing campaign, and build and launch On-Line application	<input type="checkbox"/> Optimize campaigns based on data analysis	<input type="checkbox"/> Establish funnel conversion projections	<input type="checkbox"/> Ongoing analysis and optimization
<input type="checkbox"/> Establish applicant review process, enrollment targets, messaging, and marketing plan		<input type="checkbox"/> Adjust marketing allocation and leverage new channels	<input type="checkbox"/> Review operational process for prospects and applicants	
<input type="checkbox"/> Contract with M&R agencies				

Program + Learning Design

Complete 5 months from launch	Complete 4 months from launch	Complete 3 months from launch	Complete 2 months from launch	Complete 1 month from launch
<input type="checkbox"/> Map out program scope and sequence of courses <input type="checkbox"/> Identify faculty development structure and workload <input type="checkbox"/> Begin state authorization process	<input type="checkbox"/> Select instructional design firm(s) and identify lead professors <input type="checkbox"/> Identify lead professors to author courses <input type="checkbox"/> Discuss and select desired learning technologies	<input type="checkbox"/> Sign contracts for learning technologies <input type="checkbox"/> Draft and approve blueprints for first semester courses <input type="checkbox"/> Draft the orientation experience	<input type="checkbox"/> Build first semester courses and outline plan for faculty training and support <input type="checkbox"/> Finalize orientation <input type="checkbox"/> Identify lead faculty for second semester courses	<input type="checkbox"/> Launch orientation experience and faculty training <input type="checkbox"/> QA first semester courses and technology <input type="checkbox"/> Approve blueprints for second semester

Student Experience + Support

Complete 5 months from launch	Complete 4 months from launch	Complete 3 months from launch	Complete 2 months from launch	Complete 1 month from launch
<input type="checkbox"/> Map out desired student experience <input type="checkbox"/> Define and clarify roles <input type="checkbox"/> Define methods for program/initiative implementation and evaluation <input type="checkbox"/> Identify possible retention challenges	<input type="checkbox"/> Select student support/success and tech partners <input type="checkbox"/> Establish communication plan for student lifecycle post admission	<input type="checkbox"/> Start integration of student and tech support systems <input type="checkbox"/> Prepare for course registration and orientation <input type="checkbox"/> Engage initial wave of admitted students	<input type="checkbox"/> Fully launch student and tech support systems <input type="checkbox"/> Admitted students begin first-semester registration	<input type="checkbox"/> Orientation begins <input type="checkbox"/> First semester courses begin

Technology + Integrations

Complete 5 months from launch	Complete 4 months from launch	Complete 3 months from launch	Complete 2 months from launch	Complete 1 month from launch
<input type="checkbox"/> Map out current infrastructure <input checked="" type="checkbox"/> Understand data flows to determine integration needs	<input type="checkbox"/> Start Integration with legacy system and the NoodleBus <input type="checkbox"/> Build marketing and recruitment analytics	<input type="checkbox"/> Continue systems integration with NoodleBus <input type="checkbox"/> Begin integrating learning technologies	<input type="checkbox"/> Finalize learning technologies integration <input type="checkbox"/> Begin build for academic analytics and necessary integrations	<input type="checkbox"/> Finalize and launch academic analytics

7.1. Hours & Rates by Supplier Role

Please refer to the attached Pro Forma (Attachment D) for details.

7.2. Hours by University Role

Because of the nature of our work, we are unable to anticipate the number of hours required by the University until we know which specific tasks will be assigned to Noodle Partners. We will be happy to discuss this as negotiations proceed.

7.3. Travel Cost Breakdown

There are no travel costs associated with a Noodle Partners engagement. We bear the cost of travel to campus, and all third-party providers do likewise.

7.4. Fixed Price for Assessment Phase

There is no price for an assessment phase, as we have already done this work in relationship with the University, starting with completing the RFI and through follow-up meetings in February 2018 and this summer.

7.5. Payment Schedule

Please see the GSA-DPA in Attachment B for more detailed information.