IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

VC MACON, GA, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case 5:18-CV-00318-TES**
	)	
VIRGINIA COLLEGE, LLC, ET AL.	)	
	)	
Defendants.	)	

RECEIVER'S POST-HEARING SUPPLEMENTAL BRIEF

John F. Kennedy, solely in his capacity as Receiver, respectfully submits this post-hearing supplemental brief in support of the Receiver's two pending motions. *See* Docs. 355 & 369. During the hearing concerning the Receiver's two pending motions, held on June 3, 2020 before the Court, Monroe made several statements and characterizations regarding the applicable law and facts that the Receiver believes are inaccurate or mischaracterized. After much consideration, the Receiver believes that it is prudent and necessary to file this limited post-hearing supplemental brief regarding the applicable law and standards as such clarifications will assist the Court in its final determination on the pending motions. As such, the Receiver shows the following:

I. The Receiver's burden of establishing a need for the policy proceeds is satisfied if he makes a credible showing that the proceeds cover ECA's losses.

Contrary to Monroe's argument, the Receiver does not bear some heightened burden to establish that the policy proceeds are needed to protect the estate from liability. Even using the most exacting standards set out in the authority cited by Monroe, the Receiver must show only that there is a credible, as opposed to hypothetical or speculative, need for the proceeds to protect the other assets of the estate. *See In re Downey Financial Corp.*, 428 B.R. 595, 603-05 (Bankr. D. Del. 2010).

To the extent Monroe suggests *Downey* requires something more (*i.e.*, the precise dollar amount of ECA's losses), this argument misses the mark. The *Downey* court first focused on whether there was any direct losses suffered by the debtor, and found there were none because all litigation against the debtor had been terminated. *Id.* at 604-05. The court then considered if proceeds were available to the debtor under the indemnity side of the debtor's D&O policy in light of the relevant self-insured retention. *Id.* at 605-07. It was in this regard, and only this regard, the court considered the actual amount of the debtor's losses. *See id.* at 606-07.

While the debtor in *Downey* failed to demonstrate that it satisfied its self-insured retention and thus was not entitled to coverage protecting assets of the estate, there is no such problem here. ECA has satisfied all applicable self-insured retentions and deductibles required by its insurance policy. *See* Doc. 374-1 (AIG Policy) at p. 44 ("It is further understood and agreed that in the event the Company is unable to pay an applicable Retention amount due to Financial Insolvency … then the Insurer shall commence advancing Loss within the Retention"); *id.* at p. 54 (Insurer required to advance defense costs and pay covered losses within Retention amount and not entitled to recover those defense costs and paid losses in the event of Company's Financial Insolvency); *id.* at p. 12 (defining "Financial Insolvency" to mean, among other things, "the appointment of a …"receiver … to take control of, supervise, manage or liquidate an insolvent Company"). And there are presently direct claims filed by 181 former students in arbitration against ECA, with more likely to follow based on recent communications with counsel for other students who say they have similar claims, that are considered covered losses. *See* Exh. 1, Student Arbitration Claims Chart (listing former students with pending arbitration claims); Exh. 2, Ltr. from M. Yancey to ECA (Jun. 8, 2020); Exh. 3, Ltr. From M. Yancey to ECA (May 29, 2020); *see also* Doc. 394 at p. 7-12 (former students' brief disputing Monroe's characterization of their claims against ECA and D&Os

as having "fizzled out"). ECA, in other words, currently is entitled to coverage for actual losses covered by the policy. Against this backdrop, the proceeds from the D&O Policy protect ECA's other assets and a depletion of the policy proceeds would adversely affect the Receivership Estate.

This showing satisfies the Receiver's burden of proof. The three cases discussed at the June 3 hearing and which were originally cited by Monroe do not suggest otherwise.[1] Those cases, to be sure, found that the proceeds from the insurance policies were not part of the debtors' assets based on the facts of those specific cases. But a litany of other courts have reached the opposite conclusion when presented with facts establishing the entity's right to the proceeds.[2] The situation with ECA is more closely aligned with the facts from these other cases so the Court should find that the entirety of the proceeds from the D&O Policy belong to ECA. *See In re Sacred Heart Hosp. of Norristown*, 182 B.R. 413, 419-20 (Bankr. E.D. Pa. 1995) ("Proceeds available for the Debtor's liability exposure are not segregated from the Proceeds available to the directors and officers. Thus, the Debtor is indeed an insured and has a sufficient interest in the Proceeds as a whole to bring them into the estate.").

[1] The Receiver included Monroe's cases in his PowerPoint presentation to highlight how they were distinguishable. The Receiver disputes that *In re Downey*, 428 B.R. 595 (Bankr. D. Del. 2010); *In re Allied Digital Technologies Corporation*, 306 B.R. 505 (Bankr. D. Del. 2004); and *In re CHS Electronics, Inc.*, 261 B.R. 538 (Bankr. S.D. Fla. 2001) are controlling or dispositive of the issues in this litigation.

[2] *See, e.g., In Jasmine, Ltd.*, 258 B.R. 119, 128 (Bankr. D.N.J. 2000) (holding that proceeds from a D&O policy were property of the entity/debtor's bankruptcy estate because the debtor had an indemnification interest in the proceeds); *In re Eastwind Group, Inc.*, 303 B.R. 743, 747 (Bankr. E.D. Pa. 2004) (identifying the various methods used by courts to decide the owner of the proceeds and holding that "[r]egardless of which methodology this Court were to choose, the result would be the same: the proceeds are property of the estate . . . ."); *In re Sacred Heart Hosp. of Norristown*, 182 B.R. 413, 421 (Bankr. E.D. Pa. 1995) ("Following the general rule that insurance proceeds payable to the debtor are generally property of the debtor's estate and for the reasons discussed above, we conclude that the Proceeds are property of the Debtor's estate."); *In re Circle K Corp.*, 121 B.R. 257, 261 (Bankr. D. Ariz. 1990) (concluding that proceeds from a D&O policy belonged to the entity/debtor's estate); *see also In re Vitek, Inc.*, 51 F.3d 530, 534 (5th Cir. 1995) (dicta) ("[W]hen a debtor corporation owns an insurance policy that covers its own liability vis-a-vis third parties, we—like almost all other courts that have considered the issue—declare or at least imply that both the policy *and the proceeds* of that policy are property of the debtor's bankruptcy estate."); *In re Taylor Agency, Inc.*, 281 B.R. 354, 361 (Bankr. S.D. Ala. 2001) (This Court is persuaded by the majority of courts ruling on this issue and holds that the proceeds of the errors and omissions policy are assets of the [entity/debtor's] estate.").

Additionally, Monroe's suggestion that the Court address the Receiver's concerns regarding the proceeds by entering an order encumbering the policy is explicitly inconsistent with the terms of the policy. The policy specifically prohibits the splitting and dividing of the proceeds. The relevant provision states that if "a … receivership …is commenced by a Company (whether voluntarily or involuntarily)," then the "Insureds … (a) waive and release any … injunction to the extent it may apply in such proceeding to the proceeds of this Policy," and "(b) agree not to oppose or object to any efforts by the Insurer or any Insured to obtain relief from any … injunction to the extent applicable to the proceeds of this Policy." Doc. 374-1 at p. 47 (AIG Policy).

In fact, Monroe relied on this exact provision to argue that the Court could not enter an injunction against it. Critically, however, this provision only applies to the insured and the insurer – and not Monroe. Further, this provision clearly prevents a Receiver from seeking relief that impairs the benefits or terms of the policy. Yet that is the exact relief Monroe suggested this Court should take.[3]

[3] Additionally, Monroe's argument that the priority of payment provision prevents the proceeds from becoming part of the Receivership Estate is belied by the language of the policy. By its express terms, the priority of payment provision is only implicated when ECA gives its consent for it to become operative:

> 10. In the event of Loss arising from a Claim for which payment is due under the provisions of this D&O Coverage Section, the Insurer shall ***at the written request of the particular Named Entity***:
>
> (a) first pay such Loss for which coverage is provided under Coverage A of this D&O Coverage Section, then with respect to whatever remaining amount of the applicable Separate Limit of Liability or Shared Limit of Liability is available after payment of such Loss,
>
> (b) then, only after payment of Loss has been made pursuant to Clause 10(a) above, pay such other Loss for which coverage is provided under Coverage B(ii) of this D&O Coverage Section, and
>
> (c) then, only after payment of Loss has been made pursuant to Clause 10(a) and Clause 10(b) above, pay such Loss for which coverage is provided under Coverage B(i), C or D of this D&O Coverage Section.

II. Monroe's contention that the Receiver is a "Super Plaintiff" does not thwart the Court's ability to enjoin the Chicago Complaint.

During the June 3 hearing, there was a lot of discussion regarding the Receiver's status as a "Super Plaintiff." Monroe said he could never be such. Actually, the answer is yes and no. No, the Receiver cannot "call dibs" on the entire policy proceeds because he has claims that may be covered under the policy. As stated at the hearing, the Receiver cannot prevent the insureds from obtaining access to the proceeds and policies that they have contracted for to keep the policy coffers full to satisfy the Receiver's claims. So in that aspect, the Receiver is not a "Super Plaintiff." However, outside the insurance context, the Receiver can absolutely act like a "Super Plaintiff" to bring claims for the benefit of all creditors while also excluding similar claims owned by creditors.

The Receiver can bring any claim that is dependent and derivative of the claims of the Receivership Estate, or claims that involve assets claimed by the Receivership. *Zacarias*, 945 F.3d at 897. Such claims do not have to be identical, but must be substantially identical. *Id*; *United States v. Hartog, Tr. for Bankr. Estate of Exporther Bonded Corp.*, 597 B.R. 673, 680 (S.D. Fla. 2019), *appeal dismissed sub nom. In re Exp. Bonded Corp.*, No. 19-11937-FF, 2019 WL 4137769 (11th Cir. July 15, 2019) (holding a court may bar claims that arise out of or are related to the claims a trustee can bring). The Receiver's status as a "Super Plaintiff" does not mean that the Receiver can bring any and every claim the Receiver wishes to bring, but instead, the Receiver can

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Doc. 374-1 (AIG Policy) at p. 47 (emphasis added). ECA and the Receiver have not given written consent to the priority of payments outlined in the D&O Policy. Nor are they planning on doing so. As a result, the priority of payment provision is irrelevant to the analysis on whether the proceeds belong to the Receiver. Moreover, Monroe lacks standing to attempt to enforce any term in the policy regarding the payment of proceeds because Monroe is not a beneficiary or a party to the policy. *See* Doc. 374-1 (AIG Policy) at p. 26 ("No person or organization shall have any right under this Policy to join the Insurer as a party to any action against the Insured or the Company to determine the Insured's liability, nor shall the Insurer be impleaded by the Insured or the Company or their legal representatives. Bankruptcy or insolvency of the Company or any Insured or of their estates shall not relieve the Insurer of any of its obligations hereunder.").

undoubtedly assert or move the Court to bar claims that are substantially identical to the Receiver's claims for the benefit of the entire Receivership Estate. Furthermore, nothing bars or prevents the Receiver from asserting fraud or misrepresentation claims against ECA's directors and officers in addition to breach of fiduciary duty claims. If the Receiver were to assert such claims and causes of action, the question would not be if the competing claims are substantially identical since they would, in fact, be identical.

III. The Chicago Complaint has violated the Claims Process injunction as Monroe's allegations are actually against ECA.

Monroe contends that they have not violated the Claims Process order and injunction because its claims are not subject to the Claims Process. In a similar fashion, the Court asked the Receiver during the hearing where Monroe could assert their claims contained in the Chicago Complaint. The answer is simple, the claims can and must be asserted in the Court's Claims Process. Nothing is stopping Monroe from asserting the claims within the Chicago Complaint in the Claims Process, except for the fact that Monroe intentionally left ECA, the Receiver, and any of the other Receivership Entities out of the Chicago Complaint. Why? To escape the potential pro-rata distribution for Monroe's unsecured loss of value of its investment. To escape such a pro-rata distribution, Monroe created their own "line" outside of this Court's jurisdiction. Potential pro-rata recovery is what all other creditors will get, but that is not good enough for Monroe.

As the Court will recall, Monroe represented numerous times that its fraud claims were based on fraudulent oral misrepresentation made by the directors and officers. That is completely untrue for 13 of the 15 named defendants in the Chicago Complaint.[4] Monroe's claims are not

[4] The allegations of direct oral misrepresentations are only against two of the directors and officers. Those are alleged to have been made preclosing and are likely disclaimed by the terms of the contact entered into by ECA and Monroe. Even these alleged misstatements will potentially implicate contracts signed by ECA.

based on fraudulent oral misstatements, but instead are predicated on a contract signed by ECA. The Chicago Complaint contains numerous misrepresentations and concealments by ECA's directors and officers, but almost all of these allegations arise from contractual promises allegedly made to Monroe by ECA within the Series G Shareholder Agreement. *See* Chicago Complaint, Doc. 369-3, at pp. 20-25. The Series G Shareholder Agreement, however, states that "any certificate requirement hereunder by an Authorized Officer shall be considered to have been done solely in such Authorized Officer's capacity as an officer of the applicable Company Party (and not individually)[,]" meaning the agreement excludes personal liability for the directors and officers. *See* Exh. 4, Series G Shareholder Agreement, §9.20.[5] Although the Chicago Complaint makes numerous allegations against ECA, Monroe could not name ECA as a defendant because doing so would subject the complaint to the Claims Process. Instead, Monroe named ECA's directors and officers individually. This is just another example of how the Chicago Complaint is really (and therefore should be) against ECA. The allegations within the Chicago Complaint are clearly claims against ECA for breaches of the Series G Shareholder Agreement and not against its directors and officers individually.

In addition, it is undisputed that Monroe asserted such breach of contract claims within its Shareholder Proof of Claim also based on the Series G Shareholder Agreement. Thus, Monroe's Chicago Complaint and its Shareholder Proof of Claim are based on the same contract and are seeking the same monetary damages. As a remedy to Monroe, the Court could either: (1) find that Monroe's Shareholder Proof of Claim already encompasses its allegations in the Chicago Complaint; or (2) deem it appropriate to allow Monroe to amend its Shareholder Proof of Claim to add a fraud claim since the party, loss, and transaction and occurrence are identical.

[5] The Series G Shareholder Agreement was also attached as Exhibit A to the Chicago Complaint.

Finally, based on the Chicago Complaint, ECA is likely a necessary party to the Chicago Complaint. If ECA is added as a necessary party, it would be unquestionably appropriate that the Chicago Complaint be enjoined pursuant to the Court's Claims Process injunction. Again, the only reason ECA is not a party in that case is because of Monroe's artful and creative pleading to leave ECA and this Receivership out of it. The Chicago Complaint violates the Court's Claims Process Order and injunction as the complaint seeks to escape the Claims Process and create its own, Monroe-only line for its claims to be adjudicated.

IV. The Anti-Injunction Act does not bar enforcement of this injunction.

Monroe persistently argues that any injunction prohibiting state-court actions violates the Anti-Injunction Act, 28 U.S.C. § 2283. Monroe is wrong. As an initial matter, while the Anti-Injunction Act does sometimes bar federal courts from enjoining certain state-court litigation, critically, "it is well established that the Act applies only to *pending* state court proceedings; the Act does not preclude injunctions against a lawyer's filing of *prospective* state court actions." *S.E.C. v. Kaleta*, 530 F. App'x 360, 363 (5th Cir. 2013) (emphases in original). The injunction here – issued in November 2018 without objection from Monroe – barred the Chicago Complaint long before that case was ever filed. *See B & A Pipeline Co. v. Dorney*, 904 F.2d 996, 1001–02 n. 15 (5th Cir. 1990) ("There was no state court action pending in the instant matter at the time the district court issues its injunction. Therefore, the Anti–Injunction Act does not apply.").

Indeed, the fact that Monroe's case was *at least potentially* subject to the injunction in the Receivership Order and Claims Process Order is all the more reason Monroe should have come to this Court in the first instance to seek a ruling on whether or not the policy proceeds are property of the Receivership Estate. *See Credit Bancorp*, 2000 WL 968010, at *14 ("a determination as to what property is part of the receivership estate is part and parcel of the administration of an equity

receivership. Indeed, without such a determination the purposes of the Receivership would be severely undermined."); *Providence Holdings, Inc. v. Doak*, No. 4:12-CV-556, 2013 WL 2297198, at *2 (E.D. Tex. May 24, 2013) ("any question of whether the property is properly part of the Receivership Estate must be determined by the Receivership Court prior to any action proceeding…"); *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543 (6th Cir. 2006) ("the receivership court may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained"). By not coming to this Court first, Monroe has caused everyone to waste more time and money. In any event, as discussed in the Receiver's prior briefs and at the hearing, even if the Anti-Injunction Act does apply to Chicago's Complaint, the Court may enjoin the suit as it is "necessary in aid of [the court's] jurisdiction." 28 U.S.C. § 2283.

V. The Court may stay the Chicago Complaint.

Finally, this Court can temporarily stay the Chicago Complaint instead of directing Monroe to withdraw it. To be sure, this Court can enjoin the Chicago Complaint and direct that Monroe withdraw the suit immediately. But necessarily, this Court also has the authority to direct Monroe to stay that action. "A court has inherent authority to issue such 'ancillary relief' which includes injunctions to stay proceedings by non-parties to the receivership." *Kaleta*, 530 F. App'x at 362. Such a stay will allow the Receiver to further investigate and pursue the Receivership's claims and causes of action without interference from the Chicago Complaint. Additionally, it will allow the Receiver's claims to be further developed to allow the Court to later determine if such claims are even more identical than they already are. If such claims are later determined to not be similar, the Court may lift the stay and allow Monroe to pursue its Chicago Complaint.

Such a stay order does not implicate the federalism and state sovereignty issues Monroe complains about. These issues may be implicated where a federal court's injunction enjoins *officials of a state court.* To be clear, here, this Court should temporarily enjoin *Monroe* from further prosecuting the Chicago Complaint, not officials of the Cook County court. As the Southern District of Florida once explained, "To accomplish the complete stay of any proceedings against the debtor or its property in the State Court it was not necessary to enjoin that Court itself. Such action should rarely if ever be taken by a Federal Court in reorganization proceedings. ***An injunction against the parties involved in the State Court proceedings is the proper method to obtain such relief.***" *In re Beach Resort Hotel Corp.*, 141 F. Supp. 537, 544 (S.D. Fla. 1956) (emphasis added); *Benton*, 2015 WL 10936761, at *4 ("While the AIA specifically refers to injunctions directed at state courts, it has been construed as also applying to injunctions directed at the litigants involved in pending suits.").

CONCLUSION

For the reasons set forth above and in the briefs it previously submitted to the Court, as well those advanced at the June 3 hearing, the Receiver respectfully requests that the Court grant its pending motions.

Respectfully submitted this the 13th day of June 2020.

/s/ James F. Banter
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Special Counsel to the Receiver

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, on this the 13th day of June 2020, which will send email notification to all counsel of record.

/s/ Ollie A. Cleveland, III
Ollie A. Cleveland, III (admitted *pro hac vice)*

Special Counsel to John F. Kennedy, Receiver

EXHIBIT 1

Student Arbitration Claims Chart

New ECA Student Arbitration Matters

	A	B
1		**CLAIMANT**
2	1	Allen, Crystal
3	2	Alvarez, Lehua
4	3	Rodriguez, Arianna
5	4	Brown, Breanna
6	5	Burgos, Laura
7	6	Carias, Carolina
8	7	Carpenter, Karlene
9	8	Carr, Tanzania
10	9	Cirka, Kayla
11	10	Couturier-Ollila, Rachel
12	11	Granados, Antonio
13	12	Green, Daniel
14	13	Haggerty, Jennifer
15	14	Heldt, Jason
16	15	Hoang, Hung
17	16	Jasso, Juan
18	17	Miranda, Vanessa
19	18	Moreno, Nancy (Olvera)
20	19	Moton, Wilmer, Jr.
21	20	Mulvihill, Brian
22	21	Domingos, Olubukunola
23	22	Palmero, Sebastian
24	23	Pantea, Shahkaram
25	24	Parkhurst, Vickie
26	25	Perry, Brice
27	26	Rado, Nicholas
28	27	Rios, Bianca
29	28	Rosa, Kari
30	29	Teeples, Jessika
31	30	Vanderheiden, Leslie
32	31	Vargas, Maria (Parness)
33	32	Vela, Cynthia
34	33	Rodriguez, Yaritza
35	34	Youssef, Mariana
36	35	Green, Deja
37	36	Bergman, Michael
38	37	Smith, Jessica
39	38	Pledger, Sara
40	39	Henderson, Hanna
41	40	Barringer, Lauren
42	41	Johnson, Darniece
43	42	Knott-Hobson, Mandy

New ECA Student Arbitration Matters

	A	B
44	43	Lopez, Tina
45	44	Blane, Starr
46	45	Samayoa, Erika
47	46	Johnson, Lucas
48	47	Kindberg, Tiffany
49	48	Long, Madge
50	49	Baynes, Rahkia
51	50	Pagan, Jessica
52	51	Dick, Casey
53	52	Hamilton, Martha
54	53	McGee, Porschea
55	54	Baldwin, Bria
56	55	Broussard, Tenishia
57	56	Cormier, Hailey
58	57	Denton, Sara
59	58	Dixon, Shawda
60	59	Griggs, Brianna
61	60	Hill, Heather
62	61	Hill, Dequieta
63	62	Jayasundara, Kamisha
64	63	Mendoza Jimenez, Liliana
65	64	Lindsey, Denise
66	65	Livings, Nahja
67	66	Lough, Kelley
68	67	Luong, Linh
69	68	Manuel, Emma
70	69	Neblett, Latoya
71	70	Pena, Jeffery
72	71	Sherrill, Alethia
73	72	Spikes, Latanya
74	73	Sullivan, Destiny
75	74	Taylor, Comlita
76	75	Williams, Otisha
77	76	Woody, Kaleisha
78	77	Aguilar, Jessica
79	78	Arcand, Elizabeth
80	79	Auzenne, Hydie
81	80	Baca, Jessica
82	81	Canales, Ashley
83	82	Carrera-Rosalez, Victoria
84	83	Cocotl, Elizabeth
85	84	Cofer, Jessica
86	85	Godinez, April

New ECA Student Arbitration Matters

	A	B
87	86	Holt, Whitney
88	87	Hoodye, Tabitha
89	88	Ibarra, Ashley
90	89	Izcano, Aissa
91	90	Knapp, Kathryn
92	91	Longoria, Geraldine (Valasquez)
93	92	Martinez, Deborah (Debra)
94	93	Moreno, Kassandra
95	94	Perez, Kabrina
96	95	Perez, Karina
97	96	Puente, Ashley
98	97	Ramos, Blanca
99	98	Rivera, Liliana
100	99	Roa, Anneliese
101	100	Rossel, Valerie
102	101	Sauceda, Laurie
103	102	Sauceda, Leslie
104	103	Schwind, Alyssa
105	104	Shaw, John
106	105	Solis, Roxanne
107	106	Stevens, Jennifer (Murray)
108	107	Thomas, Meghan
109	108	Vega, Anessa
110	109	Wesson, Peri
111	110	Zapata, Carla
112	111	Bailey, Lenorse
113	112	Bernotas, Gintare
114	113	Dinh, Vinh
115	114	Daughtery, Megan
116	115	Friedman, Sarah
117	116	Godinez, Pricila
118	117	Harden, Tarrance
119	118	Henderson, Anna
120	119	Hutchinson, Brittany
121	120	Jones, Abrisha
122	121	McEwen, Zachary
123	122	Meis, Jesse
124	123	Moriel, Jr. Sergio
125	124	Odom, Delaina
126	125	Olivarez, Crystal
127	126	Oliver, Danielle
128	127	Patterson, Datoya
129	128	Swor, Courtney

New ECA Student Arbitration Matters

	A	B
130	129	Aldaiz, Luz
131	130	Baldonado, Jesusita
132	131	Camacho, Cecilia
133	132	Campos, Courtney
134	133	Cardenas, Mary
135	134	Carrion, Christopher
136	135	Crawford, Amunique
137	136	Cruz, Edward
138	137	Davis, Marc
139	138	De La Rosa, Alyssa
140	139	DeLeon, Jacob
141	140	Ferguson, Krystal
142	141	Figueroa, Julianna
143	142	Gonzalez, Elda
144	143	Graham, Norma
145	144	Hernandez, Regina
146	145	Herrera, Hailey
147	146	Hinojosa, Victor
148	147	Landa, Christi
149	148	Layton, Ashley
150	149	Lerma, Beverly
151	150	Lord, Gregory
152	151	Marquez, Agnes
153	152	Marroquin, Crystal
154	153	Martinez, Brianda
155	154	Midkiff, John
156	155	Motley, Bianca
157	156	Okeze, Cyprian
158	157	Reiter, Greg
159	158	Reyes, Jessica
160	159	Rhody, Lorena
161	160	Rodriguez, Adan
162	161	Salas, Angelica
163	162	Sanders, Turquoise
164	163	Solis, Claudia
165	164	Teneck, Solange
166	165	Vidaure, Stephanie
167	166	Wakefield, Apryl
168	167	Weary-Hinton, Angela
169	168	Williams, Jennifer
170	169	Williams, Castina
171	170	Winn, Emma
172	171	Ybarra, Stephanie

New ECA Student Arbitration Matters

	A	B
173	172	Zepeda, Amelia
174	173	Garcia, Karina
175	174	Mata, Maria
176	175	Brooks, Chloe
177	176	Trevino, Anita
178	177	Williams, Tanisha
179	178	Torres, Samuel
180	179	Townsend, Latoya
181	180	Birmingham, Qyshayla
182	181	Smith, Natalya

EXHIBIT 2

Ltr. from M. Yancey to ECA
(Jun. 8, 2020)

mt
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June 8, 2020

VIA CERTIFIED U.S. MAIL:

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To Whom it May Concern:

I represent Natalya Smith, who is a former student of Virginia College and attended its Montgomery, Alabama campus. This is a written demand for relief provided pursuant to Section 8-19-10 of the Code of Alabama.

Ms. Smith contends that Education Corporation of America and Virginia College, LLC, or others under their control and supervision violated the Alabama Deceptive Trade Practices Act by committing unfair and deceptive acts or practices including the following:

- by causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of Virginia College's educational products and/or services;

- by causing confusion or misunderstanding as to the affiliation, connection, or association with, or certification of Virginia College's educational products and/or services by another;

- by representing that Virginia College's educational products and/or services had sponsorship, approval, characteristics, uses, benefits, or qualities that they did not have;

- by representing that Virginia College's educational products and/or services were of a particular standard, quality, or grade, when they were of another;

- by advertising Virginia College's educational products and/or services with the intent not to sell them as advertised;

- by collecting tuition, fees and other payments and then failing to provide services of comparable value in return for the payments;

- by having Claimant expend valuable student financial aid while Virginia College provided nothing of meaningful value in return;

- by advising Claimant that it was in her best interest to expend valuable student financial aid for educational services at Virginia College when it was not;

- by comparing Virginia College to other educational programs and in so doing falsely touting Virginia College to be of superior quality and value when it was not;

- using deceptive representations in connection with the educational services offered to Claimant;

- continuing to falsely represent to Claimant that the educational program was fully accredited even after such accreditation was in severe jeopardy or had been revoked;

- falsely representing that accreditation by the Accrediting Council for Independent Colleges and Schools ("ACICS") was a legitimate accreditation, when instead ACICS was a sham organization that routinely granted accreditation to educational programs that should not have qualified for it or participation in the federal student loan program;

- continuing to falsely represent that the educational services to be provided to Claimant met the standards for accreditation even after such accreditation had been revoked;

- falsely representing to Claimant that she would be provided career placement services to assist her in finding employment;

- falsely representing to Claimant that she would be allowed to complete her degree program prior to the campus closing;

- falsely representing that if her program of study was cancelled she would be refunded the tuition and fees paid for the program;

- failing to adequately disclose critical information about the school, including that it was having serious financial problems, its accreditations were in question, and it was planning to close;

- by requiring students to enter into unconscionable contracts of adhesion with terms and provisions that were grossly unfair and one-sided to the favor of Virginia College and ECA and to the detriment of the students, including the Claimant;

- by maintaining a system and scheme whereby Virginia College and ECA collected payments through the federal and private student aid programs, and other similar programs and then used the funds to prop up their own failing institutions, make payments to their investors and creditors, and enrich its management and owners rather than provide educational services of value to the students including the Claimant; and/or

- by failing to deal fairly with the Claimant; and

- by engaging in other unconscionable, false, misleading, and/or deceptive acts or practices in the conduct of ECA and Virginia College's businesses.

As a result of these and other deceptive and unfair acts and practices, Ms. Smith suffered injury in that she paid tuition and incurred other costs to attend Virginia College and received nothing of value in return; she spent substantial time attending classes and doing coursework; she travelled to and from the school throughout her enrollment; she forewent and missed employment and educational opportunities in order to attend and pursue her diploma from Virginia College; she has been unable to transfer credits to another institution to successfully complete her program; and she has been unable to find employment in the field for which she attended Virginia College and therefore has had loss of income. Ms. Smith has also suffered mental anguish and extreme frustration.

Your attorney may contact me at (205) 939-0199 if you have any questions.

Sincerely,

P. Michael Yancey

cc: Robert G. Methvin, Jr., Esq.
Brooke B. Rebarchak, Esq.

EXHIBIT 3

Ltr. From M. Yancey to ECA
(May 29, 2020)

METHVIN, TERRELL, YANCEY, STEPHENS & MILLER, P.C.
ATTORNEYS

Robert G. Methvin, Jr.
James M. Terrell
P. Michael Yancey
J. Matthew Stephens
Rodney E. Miller
Patrick C. Marshall
Courtney C. Gipson
Brooke B. Rebarchak

May 29, 2020

Via Certified U.S. Mail:
EDUCATION CORPORATION OF AMERICA
c/o National Registered Agents Inc., Registered Agent
2 North Jackson Street, Suite 605
Montgomery, Alabama 36104

VIRGINIA COLLEGE, LLC
c/o National Registered Agents Inc., Registered Agent
2 North Jackson Street, Suite 605
Montgomery, Alabama 36104

Ollie A. "Tres" Cleveland, III
Kathryn J. Bushby
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, AL 35203-2602
Phone: (205)254-1000
Fax: (205)254-1999
tcleveland@maynardcooper.com
kbushby@maynardcooper.com

To Whom it May Concern:

I represent Qyshayla Birmingham, who is a former student of Virginia College and attended its Montgomery, Alabama campus. This is a written demand for relief provided pursuant to Section 8-19-10 of the Code of Alabama.

Ms. Birmingham contends that Education Corporation of America and Virginia College, LLC, or others under their control and supervision violated the Alabama Deceptive Trade Practices Act by committing unfair and deceptive acts or practices including the following:

- by collecting tuition, fees and other payments and then failing to provide services of comparable value in return for the payments;

- by having Ms. Birmingham expend valuable G.I. benefits while Virginia College provided nothing of meaningful value in return;

- by advising Ms. Birmingham that it was in her best interest to expend valuable G.I. Benefits for educational services at Virginia College when it was not;

- by comparing Virginia College to other educational programs and in so doing falsely touting Virginia College to be of superior quality and value when it was not;

- using deceptive representations in connection with the educational services offered to Ms. Birmingham;

- continuing to falsely represent to Ms. Birmingham that the educational program was fully accredited even after such accreditation was in severe jeopardy or had been revoked;

- falsely representing that accreditation by the Accrediting Council for Independent Colleges and Schools ("ACICS") was a legitimate accreditation, when instead ACICS was a sham organization that routinely granted accreditation to educational programs that should not have qualified for it or participation in the federal student loan program;

- continuing to falsely represent that the educational services to be provided to Ms. Birmingham met the standards for accreditation even after such accreditation had been revoked;

- falsely representing to Ms. Birmingham that she would be provided career placement services to assist her in finding employment;

- falsely representing to Ms. Birmingham that she would be allowed to complete her degree program prior to the campus closing;

- falsely representing that if her program of study were cancelled, she would be refunded the tuition paid for the program;

- failing to adequately disclose critical information about the school, including that it was having serious financial problems, its accreditations were in question, and it was planning to close;

- by requiring students to enter into unconscionable contracts of adhesion with terms and provisions that were grossly unfair and one-sided to the favor of Virginia College and ECA and to the detriment of the students, including Ms. Birmingham; and/or

- by maintaining a system and scheme whereby Virginia College and ECA collected payments through the federal student aid program, G.I. benefit program and other similar programs and then used the funds to prop up their own failing institutions, make payments to investors and creditors, and enrich its management and owners rather than provide educational services of value to the students like Ms. Birmingham.

As a result of these and other deceptive and unfair acts and practices, Ms. Birmingham suffered injury in that she expended her earned G.I. Bill benefits, and incurred other costs to attend Virginia College and received nothing of value in return; she spent substantial time attending classes and doing coursework; she arranged for child-care for her children while attending classes; she travelled to and from the school throughout her enrollment; she forewent and missed employment and educational opportunities in order to attend and pursue her diploma from Virginia College; she has been unable to transfer credits to another institution to successfully complete her program; and she has been unable to find employment in the field for which she attended Virginia College and therefore has had loss of income. Ms. Birmingham has also suffered mental anguish and extreme frustration.

Your attorney may contact me at (205) 939-0199 if you have any questions.

Sincerely,

P. Michael Yancey

cc: Robert G. Methvin, Jr.
Brooke B. Rebarchak

EXHIBIT 4

Series G Shareholder Agreement

EXECUTION VERSION

SERIES G PREFERRED STOCK PURCHASE AGREEMENT

by and among

EDUCATION CORPORATION OF AMERICA,
as the Company,

CERTAIN SUBSIDIARIES THEREOF,
as the Other Company Parties,

and

THE INVESTORS NAMED HEREIN

Dated as of September 3, 2015

TABLE OF CONTENTS

EXHIBITS

SERIES G PREFERRED STOCK PURCHASE AGREEMENT

THIS SERIES G PREFERRED STOCK PURCHASE AGREEMENT, dated as of September 3, 2015, is by and among EDUCATION CORPORATION OF AMERICA, a Delaware corporation (the "**Company**"), each of its Subsidiaries identified as the "**Other Company Parties**" on the signature pages hereto, and the investors listed on Annex I attached to this Agreement (each, a "**Investor**" and together, the "**Investors**").

RECITALS

WHEREAS, Investors desire to purchase from the Company, and the Company desires to issue and sell to Investors, forty thousand (40,000) shares (the "**Purchased Shares**") of Series G Redeemable Non-Voting Participating Preferred Stock (the "**Series G Preferred Stock**"), at a price per share of $1,000, for an aggregate purchase price of $40,000,000 on the terms and conditions set forth in this Agreement;

WHEREAS, on the Closing Date, the Company will (a) consummate the transactions contemplated in that certain Purchase and Sale Agreement (as amended, the "**Kaplan Purchase Agreement**") by and among the Company, Kaplan Inc., Kaplan Higher Education, LLC and the other Asset Sellers party thereto and named therein, dated as of February 12, 2014; and (b) obtain (i) a $50,000,000 Standby Letter of Credit Facility from Cadence Bank, N.A. ("**Cadence**"), (ii) a $20,000,000 Revolving Credit Facility from Cadence (the "**Cadence Senior Revolver**"), and (iii) a $32,000,000 secured term loan from certain Affiliate of Investor (the "**Monroe Term Loan**");

WHEREAS, as a substantial inducement to Investors and their Affiliates to enter into this Agreement and consummate the Transactions, Sponsor and its Affiliates shall, simultaneously herewith, execute and deliver to Investors, the Sponsor Backstop Agreement (as defined below); and

WHEREAS, the proceeds of sale of the Series G Preferred Stock, together with the proceeds of the Monroe Term Loan on the Closing Date, will be used to (i) cash collateralize DOE Letters of Credit, (ii) establish the Series G Dividend Reserve, (iii) refinance certain existing indebtedness of the Company Parties, and (iv) pay fees, costs and expenses incurred in connection with the Transactions.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

ARTICLE I
Definitions

SECTION 1.01 Defined Terms. As used herein, the following terms shall have the meanings specified in this Section 1.01 unless the context otherwise requires:

"**Accreditation**" means the status of public recognition granted by any Accrediting Body to an educational institution, location or program thereof that meets the Accrediting Body's standards and requirements.

"**Accrediting Body**" means the Accrediting Council of Independent Colleges and Schools or any non-governmental entity or organization that has been recognized by the DOE as an "institutional accrediting agency" or "programmatic accrediting agency" as defined in, 34 C.F.R. Part 602.

"**Acquisition**" means, with respect to any Person, the acquisition by such Person, in a single transaction or in a series of related transactions, of (a) all or any substantial portion of the property of another Person, or any division, line of business or other business unit of another Person or (b) at least a majority of the Voting Stock of another Person, in each case whether or not involving a merger or consolidation with such other Person and whether for cash, property, services, assumption of Indebtedness, securities or otherwise.

"**Adverse Proceeding**" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Company Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, whether pending, threatened in writing against any Company Party or any of its Subsidiaries or any material property of any Company Party or any of its Subsidiaries.

"**Affiliate**" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. The term "**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms "**Controlling**" and "**Controlled**" have meanings correlative thereto.

"**Agreement**" means this Series G Preferred Stock Purchase Agreement, as the same may be amended, amended and restated, supplemented, or otherwise modified from time to time.

"**Applicable Laws**" means, as to any Person, all applicable laws, including all applicable provisions of constitutions, statutes, rules, ordinances, regulations and orders of all Governmental Authorities and all orders, rulings, writs and decrees of all courts, tribunals and arbitrators, excluding Educational Laws.

"**Approved Fund**" means any Fund that is administered or managed by (a) a Holder, (b) an Affiliate of a Holder or (c) an entity or an Affiliate of an entity that administers or manages a Holder.

"**Asset Sale**" means a sale, lease, sale and leaseback, assignment, conveyance, exclusive license (as licensor), transfer or other disposition to, or any exchange of property with, any Person, in one transaction or a series of transactions, of all or any part of any Company Party or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, created, leased or licensed, including the Capital Stock of any Subsidiary of any Company Party, other than (a) dispositions of surplus, obsolete or worn out property or property no longer used or

useful in the business of any Company Party and its Subsidiaries, whether now owned or hereafter acquired, in the ordinary course of business; (b) dispositions of inventory sold, and Intellectual Property licensed, in the ordinary course of business; (c) dispositions of accounts or payment intangibles (each as defined in the UCC) resulting from the compromise or settlement thereof in the ordinary course of business for less than the full amount thereof; (d) dispositions of Cash Equivalents and the use of cash in the ordinary course of business; (e) licenses, sublicenses, leases or subleases granted to any third parties in arm's-length commercial transactions in the ordinary course of business that do not interfere in any material respect with the business of any Company Party or any of its Subsidiaries; (f) the granting of Liens permitted under this Agreement; and (g) transfers or dispositions among Company Parties.

"**Assignment and Acceptance**" means an assignment and acceptance, pursuant to which an assignee of a Holder becomes a party hereto, substantially in the form of Exhibit A.

"**Attributable Principal Amount**" means (a) in the case of Capital Leases, the amount of Capital Lease obligations determined in accordance with GAAP and (b) in the case of Sale and Leaseback Transactions, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

"**Authorized Officer**" means, with respect to any Company Party, the Chairman of the Board of the Company, the President, the Chief Executive Officer, the Chief Financial Officer, the Secretary, the Treasurer or any other senior officer (to the extent that such senior officer is designated as such in writing to the Holders by such Company Party) of such Company Party.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Board of Governors**" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"**Budget**" has the meaning set forth in Section 6.01(d).

"**Business Day**" means (a) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of Illinois, or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close, and (b) any day which is a Business Day described in clause (a) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"**Cadence**" has the meaning set forth in the recitals to this Agreement.

"**Cadence Senior Revolver**" has the meaning set forth in the recitals to this Agreement.

"**CapEx Amount**" has the meaning set forth in Section 7.08.

"**Capital Stock**" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership

or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"**Capital Lease**" means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

"**Cash Equivalents**" means, as at any date of determination, any of the following: (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one (1) year after such date; (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (c) commercial paper maturing no more than one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (d) certificates of deposit or bankers' acceptances maturing within one (1) year after such date and issued or accepted by any Company Party or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (e) shares of any money market mutual fund that has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) through (d) above.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

"**Change of Control**" means any of (a) Sponsor shall fail to (y) have or exercise the power to elect a majority of the board of directors or other managing body of the Company or (z) own at least 65% of the outstanding Voting Stock of the Company on a fully-diluted basis, (b) the Company shall fail to own 100% of the issued and outstanding Capital Stock of each of EC Alabama and New England, (c) a Subsidiary of the Company (other than the Company) shall fail to own, directly or indirectly, 100% of the issued and outstanding Capital Stock of each of its Subsidiaries, other than Capital Stock issued to directors to the extent required by law or other qualifying shares to the extent required by law and other than as a result of a transaction permitted hereunder, (d) a "Change in Ownership" or a "Fundamental Change", in each case as defined in the Charter or (e) any change in ownership or control of any Company Party or any of its Subsidiaries or any School, the effect of which is to cause such Company Party or such Subsidiary or any such School to cease to qualify as an educational institution eligible to participate in the Title IV Programs, whether by operation by DOE regulations as set forth in 34 C.F.R. § 600.31, an Accrediting Body standard or any state law.

"**Charter**" means the Sixth Amended and Restated Certificate of Incorporation of the Company, dated as of the Closing Date, as amended, restated, supplemented, or otherwise modified from time to time to the extent permitted hereunder.

"**Claims**" has the meaning set forth in the definition of Environmental Claims.

"**Closing**" has the meaning set forth in Section 2.02.

"**Closing Date**" means September 3, 2015.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to the Code are to the Code, as in effect at the date of this Agreement, and any subsequent provisions of the Code, amendatory thereof, supplemental thereto or substituted therefor.

"**Cohort Default Rate**" means the meaning as provided in 34 C.F.R. Section 668 Subparts M and N, including Cohort Default Rates calculated for the periods specified in 34 C.F.R. § 668.183 and Cohort Default Rates calculated for the period specified in 34 C.F.R. § 668.202.

"**Collateral Agent**" has the meaning set forth for such term in the Intercreditor Agreement.

"**Company**" has the meaning set forth in the preamble to this Agreement.

"**Company Party**" means the Company and each of the Other Company Parties and each other Person that becomes a Company Party hereafter pursuant to the execution of joinder documents.

"**Compliance Certificate**" means a certificate duly completed and executed by an Authorized Officer of the Company substantially in the form of Exhibit B, together with such changes thereto or departures therefrom as the Required Holders may from time to time reasonably request or approve for the purpose of monitoring the Company Parties' compliance with certain obligations under this Agreement or as otherwise agreed to by the Required Holders.

"**Compliance Date**" means April 30, 2015.

"**Confidential Information**" has the meaning set forth in Section 9.16(a).

"**Consolidated Capital Expenditures**" means, for any period, for the Company Parties and their Subsidiaries on a consolidated basis, all capital expenditures, as determined in accordance with GAAP; provided, that Consolidated Capital Expenditures shall not include (i) any expenditures financed with net cash proceeds from an Asset Sale or event of loss, (ii) the cashless portion of expenditures made in connection with an asset swap or trade or (iii) expenditures to the extent actually reimbursed or funded by a third-party or by Sponsor in cash.

"**Consolidated Current Assets**" means, as at any date of determination, for the Company Parties and their Subsidiaries on a consolidated basis, the total assets that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents.

"**Consolidated Current Liabilities**" means, as at any date of determination, for the Company Parties and their Subsidiaries on a consolidated basis, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a balance sheet of the Company Parties and their Subsidiaries, but excluding (i) the current portion of any Indebtedness and (ii) without duplication of clause (i) above, all Loans then outstanding.

"**Consolidated EBITDA**" means, for any period, for the Company Parties and their Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period plus the following to the extent deducted in calculating such Consolidated Net Income (without duplication): (a) Consolidated Interest Charges for such period, (b) the provision for federal, state, local and foreign income taxes payable or accrued by the Company Parties and their Subsidiaries for such period, (c) depreciation and amortization expense for such period (d) charges, costs, expenses, losses, adjustments or restatements (including, but not limited to, reductions in recognized revenue related to deferred revenue adjustments) as a result of the application of purchase accounting for a twelve month period following the Closing Date not to exceed $3,000,000 in the aggregate during such period, and $1,500,000 in the aggregate thereafter, (e) Consolidated EBITDA of the Kaplan campuses solely during the period commencing July 1, 2015 to the Closing Date, and only for so long as the Fiscal Quarter period ending September 30, 2015 is in the measurement period, (f) one-time costs, expenses and charges related to due diligence, integration and the closing of the Transactions, not to exceed $6,000,000 in the aggregate during the period from (and including) the Fiscal Quarter ending September 30, 2015 to (and including) the Fiscal Quarter ending March 31, 2016, (g) expenses relating to severance not to exceed $3,000,000 in any twelve month period, (h) losses from campuses opened less than twenty-four (24) months, not to exceed (1) $1,000,000 in any twelve month period ending on or before December 31, 2016 and (2) $2,000,000 in any twelve month period thereafter, (i) losses from discontinued operations not to exceed $500,000 in any twelve month period, and (j) non-cash expenses related to amortization of incentive grants of Capital Stock; provided that, unless otherwise approved by the Required Holders in writing, the addbacks and adjustments in the foregoing clauses (g), (h) and (i) that are added back to Consolidated Net Income must be reasonably acceptable to the Required Holders, reported clearly shall not exceed an aggregate amount of (1) for the period commencing on October 1, 2015 and ending on September 30, 2016, $10,000,000, and (2) for each trailing twelve month period thereafter, the lesser of (x) 12% of EBITDA calculated before the addback or adjustment for any such item and (y) $6,000,000 ; provided, further that, notwithstanding anything to the contrary contained herein, for each of the Fiscal Quarters set forth below, Consolidated EBITDA shall be deemed to be the amount set forth below opposite such Fiscal Quarter:

Fiscal Quarter	Consolidated EBITDA
September 30, 2014	$6,697,000
December 31, 2014	$18,473,000
March 31, 2015	$10,399,000
June 30, 2015	$7,234,000

"**Consolidated Fixed Charge Coverage Ratio**" means, as of any date of determination, the ratio of (a) Consolidated EBITDA for the period of the four Fiscal Quarters most recently ended to (b) Consolidated Fixed Charges (as reduced by the Kaplan Capital Expenditure Offset, which for the avoidance of doubt, such Kaplan Capital Expenditure Offset shall be included in the trailing twelve month period only in each of the first three Fiscal Quarters after the Closing Date to calculate the Consolidated Fixed Charge Coverage Ratio and only to the extent such Kaplan Capital Expenditure Offset is paid with cash on the Closing Date) for the period of the four Fiscal Quarters most recently ended.

"**Consolidated Fixed Charges**" means, for any period, for the Company Parties and their Subsidiaries on a consolidated basis, an amount equal to the sum of (without duplication) (a) Consolidated Taxes paid in cash for such period plus (b) the cash portion of Consolidated Interest Charges for such period, but excluding transaction and financing fees and expenses paid or payable in connection with the Transactions in an aggregate amount not to exceed $4,000,000, plus (c) Unfinanced Consolidated Capital Expenditures for such period paid in cash plus (d) Consolidated Scheduled Funded Debt Payments for such period paid in cash plus (e) the amount of all dividends and other distributions made by any Company Party during such period (excluding (1) any reserves or dividends paid with respect to Series G Preferred Stock until the earlier of (x) termination of the Dividend Reserve Agreement or (y) two years from the Closing Date, (2) intercompany distributions among Company Parties, and (3) distributions made pursuant to Section 7.04(i)) plus (f) payments to any Multiemployer Plan, all as determined in accordance with GAAP.

"**Consolidated Interest Charges**" means, for any period, for the Company Parties and their Subsidiaries on a consolidated basis, an amount equal to the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, plus (b) the portion of rent expense with respect to such period under Capital Leases that is treated as interest in accordance with GAAP.

"**Consolidated Net Income**" means, for any period, for the Company Parties and their Subsidiaries on a consolidated basis, the net income of the Company Parties and their Subsidiaries for that period, as determined in accordance with GAAP, excluding (i) any gains or losses from Asset Sales outside the ordinary course of business, (ii) any extraordinary gains or losses, (iii) any gains from discontinued operations, (iv) the income of any Person (other than a Subsidiary of a Company Party) in which a Company Party or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by a Company Party or such Subsidiary in the form of dividends or similar distributions, (v) the undistributed

earnings of any Subsidiary of a Company Party to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation, governing document or law applicable to such Subsidiary, and (vi) the income of any Subsidiary of a Company Party which is not a guarantor of the Obligations.

"**Consolidated Scheduled Funded Debt Payments**" means for any period for the Company Parties and their Subsidiaries on a consolidated basis, the sum of all regularly scheduled payments of principal on Consolidated Funded Debt, as determined in accordance with GAAP. For purposes of this definition, "regularly scheduled payments of principal" (a) shall be deemed to include the Attributable Principal Amount in respect of Capital Leases, and (b) shall be determined after giving effect to any reduction of such regularly scheduled payments resulting from the application of any voluntary or mandatory prepayments.

"**Consolidated Taxes**" means, for any period, for the Company Parties and their Subsidiaries on a consolidated basis, the aggregate of all federal, state and local income taxes, as determined in accordance with GAAP.

"**Consolidated Working Capital**" means, as at any date of determination, the excess or deficiency of Consolidated Current Assets over Consolidated Current Liabilities.

"**Consumer Protection Agency**" means any Governmental Authority that regulates, administers or enforces Consumer Protection Laws, including, without limitation, the federal Consumer Financial Protection Bureau, the Federal Trade Commission, any state financial institutions, departments or agencies, or any state attorney general.

"**Consumer Protection Law**" means any law, regulation, rule, order or binding standard directly or indirectly related to the protection of consumers in financing transactions, including, without limitation, the federal Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the privacy and data security provisions of the Gramm-Leach-Bliley Act, Section 5 of the Federal Trade Commission Act, the Consumer Financial Protection Act (including the prohibition against unfair, deceptive or abusive acts or practices) and the rules and regulations implementing the foregoing, and any state retail installment sales act, loan law, usury law, or unfair or deceptive acts or practices law and the rules and regulations implementing the foregoing.

"**Contractual Obligation**" means, as to any Person, any obligation of such Person under any security issued by such Person or any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound other than the Obligations.

"**Credit Agreements**" means that the First Lien Credit Agreement and the Second Lien Credit Agreement.

"**Credit Documents**" means the First Lien Credit Documents and the Second Lien Credit Documents.

"**Debtor Relief Laws**" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement,

receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"**Default**" means any event, act or condition that with notice or lapse of time, or both, would constitute an Event of Default.

"**Deferred Investment Fee**" has the meaning set forth in Section 6.13.

"**Dividend Reserve Agreement**" means a dividend reserve agreement to be entered into by and between the Company, Investors and the Dividend Reserve Agent thereunder, substantially in the form of Exhibit C.

"**DOE**" means the United States Department of Education and any successor agency administering Title IV Programs.

"**DOE Approval**" means a Program Participation Agreement (provisional or full), both issued and executed by DOE (other than a TPPPA), and an accurate Eligibility and Certification Approval Report (ECAR).

"**DOE Letters of Credit**" means those letters of credit which the Company Parties are required to post in favor of the DOE, which as of the Closing Date, the terms of which are set forth on Exhibit D.

"**Dollars**" and "**$**"means dollars in lawful currency of the United States.

"**Domestic Subsidiary**" means each Subsidiary of the Company that is organized under the Applicable Laws of the United States or any state thereof or the District of Columbia.

"**East West Bank Loan**" means that certain indebtedness evidenced by the Loan and Security Agreement date as of August 27, 2015 by and among Willis Stein & Partners III, L.P., Willis Stein & Partners III-C, L.P., Willis Stein & Partners Dutch III-A, L.P., Willis Stein & Partners Dutch III-B, L.P., and East West Bank in the original principal amount of $25,000,000.

"**ECA Schools**" means the Schools owned by the Company Parties prior to the date of the Kaplan Acquisition.

"**Educational Agency**" means any Person, entity or organization, whether governmental, government chartered, private, or quasi-private, that engages in granting or withholding Educational Approvals for, administers a material amount of financial assistance to or for students of, or otherwise regulates private postsecondary schools in accordance with standards relating to performance, operation, financial condition or academic standards of such schools, including without limitation the DOE, State Educational Agency, any guaranty agency, any state or federal Governmental Authority that administers education aid programs for members of the military or their families, including but not limited to the GI Bill, the Post-9/11 GI Bill, or the Tuition Assistance Program, and any Accrediting Body.

"**Educational Approval**" means any license, authorization, Accreditation, DOE Approval or other approval required to be issued by an Educational Agency in order for a school

or any location or branch thereof or educational program offered thereby to participate in the Title IV Programs, any institutional Accreditation or programmatic Accreditation to the extent such Accreditation is necessary for the relevant School to conduct its operations and offer its educational programs or for graduates of such School to take the examinations necessary to qualify to work in the field for which they were trained or to otherwise be licensed in such field, or any approval issued by a federal or state Governmental Authority that administers education aid programs for members of the military or their families, including but not limited to the GI Bill, the Post-9/11 GI Bill, or the Tuition Assistance Program and also including any approval required in connection with the Kaplan Acquisition.

"**Educational Law**" means any statute, law, regulation, rule, order, or binding standard issued or administered by, or related to, any Educational Agency.

"**Educational Loan**" means any student loan made, insured or originated under Title IV.

"**Eligible Line of Business**" means the business of operating educational facilities providing postsecondary educational programs, vocational training (including, but not limited to, vocational training of high school students), continuing education for working adults and each line of business related thereto.

"**Environmental Claims**" means any and all known administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations (other than internal reports prepared by the Company Parties (a) in the ordinary course of such Person's business or (b) as required in connection with a financing transaction or an acquisition or disposition of real estate) or proceedings relating in any way to any Environmental Law or any permit issued, or any approval given, under any such Environmental Law ("**Claims**"), including (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the release or threatened release of Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

"**Environmental Law**" means any applicable federal, state, foreign or local statute, law, rule, regulation, ordinance, code and rule of common law now or hereafter in effect and in each case as amended, and any binding judicial or administrative interpretation thereof, including any binding judicial or administrative order, consent decree or judgment, relating to the protection of the environment or human health or safety (to the extent relating to exposure to Hazardous Materials).

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder. Section references to ERISA are to ERISA as in effect at the date of this Agreement and any subsequent provisions of ERISA amendatory thereof, supplemental thereto or substituted therefor.

"**ERISA Affiliate**" means each "person" (as defined in Section 3(9) of ERISA) that, together with any Company Party or a Subsidiary thereof, is, or within the last six (6) years was,

treated as a "single employer" within the meaning of Section 414(b) or (c) of the Code, and solely with respect to Section 412 of the Code, under Section 414(m) or (o) of the Code.

"**ERISA Event**" means (a) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which notice to the PBGC has been waived by regulation); (b) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code), the failure to make by its due date any minimum required contribution or any required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make by its due date any required contribution to a Multiemployer Plan; (c) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (d) the withdrawal from any Pension Plan with two (2) or more contributing sponsors or the termination of any such Pension Plan, in either case resulting in material liability pursuant to Section 4063 or 4064 of ERISA; (e) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition reasonably likely to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of liability pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA, each case reasonably likely to result in material liability; (g) the withdrawal of any Company Party, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if such withdrawal is reasonably likely to result in material liability, or the receipt by any Company Party, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it is in "critical" or "endangered" status within the meaning of Section 103(f)(2)(G) or ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA, if such reorganization, insolvency or termination is reasonably likely to result in material liability; (h) the imposition of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Pension Plan if such fines, penalties, taxes or related charges are reasonably likely to result in material liability; (i) the assertion of a material claim (other than routine claims for benefits and funding obligations in the ordinary course) against any Pension Plan other than a Multiemployer Plan or the assets thereof, or against any Person in connection with any Pension Plan such Person sponsors or maintains reasonably likely to result in material liability; (j) receipt from the Internal Revenue Service of a final written determination of the failure of any Pension Plan intended to be qualified under Section 401(a) of the Internal Revenue Code to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (k) the imposition of a lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to Section 303(k) or 4068 of ERISA.

"**Event of Default**" has the meaning set forth in Article VIII.

"**Facility**" means any real property including all buildings, fixtures or other improvements located on such real property now, hereafter or heretofore owned, leased, operated or used by any Company Party or any of its Subsidiaries or any of their respective predecessors.

"**Fifth Anniversary**" has the meaning set forth in Section 6.13.

"**Financial Officer Certification**" means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of the Company that such financial statements fairly present, in all material respects, the financial condition of the Company Parties and their Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

"**First Lien Agent**" means Cadence and its successors and permitted assigns.

"**First Lien Credit Agreement**" means that certain Credit Agreement, dated as of the Closing Date, by and among the Company Parties thereto, the Lenders thereunder and Cadence, as amended, restated, amended and restated, supplemented, modified or refinanced from time to time in accordance with the terms of the Intercreditor Agreement and this Agreement.

"**First Lien Credit Documents**" means the First Lien Credit Agreement and the other "Credit Documents" referred to in the First Lien Credit Agreement.

"**Fiscal Quarter**" means a fiscal quarter of any Fiscal Year.

"**Fiscal Year**" means the fiscal year of the Company Parties and their Subsidiaries ending on December 31 of each calendar year.

"**Foreign Subsidiary**" means each Subsidiary of a Company Party that is not a Domestic Subsidiary.

"**Fund**" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"**Funded Debt**" means, as to any Person at a particular time, without duplication, all of the following, to the extent included as indebtedness or liabilities on a balance sheet prepared in accordance with GAAP:

(a) all obligations for borrowed money, whether current or long-term (including the Obligations hereunder), all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business not past due for more than thirty (30) days);

(c) all obligations under letters of credit (including standby and commercial), bankers' acceptances and similar instruments (including bank guaranties);

(d) the Attributable Principal Amount of Capital Leases;

(e) all Funded Debt of others secured by (or for which the holder of such Funded Debt has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;

(f) all Guarantees in respect of Funded Debt of the types described in clauses (a) through (e) above of another Person; and

(g) Funded Debt of any partnership or joint venture or other similar entity in which such Person is a general partner or joint venture (other than a joint venture that is itself a corporation or limited liability company), and, as such, has personal liability for such obligations, but only to the extent there is recourse to such Person for payment thereof.

For purposes hereof, the amount of Funded Debt shall be determined (x) based on the outstanding principal amount in the case of borrowed money indebtedness under clause (a), (y) based on the maximum amount available to be drawn in the case of letter of credit obligations and the other obligations under clause (b), and (z) based on the amount of Funded Debt that is the subject of the Guarantees in the case of Guarantees under clause (f).

"**GAAP**" means generally accepted accounting principles in the United States, as in effect from time to time; provided, that if the Company notifies the Holders that the Company requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in GAAP or in the application thereof on the operation of such provision (or if the Required Holders notify the Company that the Required Holders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then the Holders and the Company Parties shall negotiate in good faith to effect such amendment and such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

"**Gainful Employment Certification Requirements**" means the certification requirements set forth at 34 C.F.R. § 668.414.

"**Gainful Employment Disclosure Requirements**" means the disclosure requirements set forth at 34 C.F.R. § 668.6, effective from July 1, 2011 to January 1, 2017, and the disclosure requirements set forth at 34 C.F.R. § 668.412, effective as of January 1, 2017.

"**Gainful Employment Minimum Standards**" means, with respect to any gainful employment educational program in a given award year, either (a) an "Annual Earnings Rate" of 8% or less, or (b) a "Discretionary Income Rate" of 20% or less, each as defined and calculated

in accordance with the Gainful Employment Rule and issued as final debt measures, as set forth at 34 C.F.R. § 668.403.

"**Gainful Employment Rates**" means the annual earnings rate and discretionary income rate for an educational program, as calculated and issued by the DOE (in draft or final form) pursuant to 34 C.F.R. § 668.404.

"**Gainful Employment Reporting Requirements**" means the reporting requirements set forth at 34 C.F.R. § 668.411.

"**Gainful Employment Rule**" means the rule to be codified at 34 C.F.R. § 668.401 *et seq.* as published in the Federal Register on October 31, 2014, and effective as of July 1, 2015.

"**Governmental Authority**" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (, including any supra-national bodies such as the European Union or the European Central Bank and any group or body charged with setting financial accounting or regulatory capital rules or standards), but excluding any Educational Agency.

"**Guarantee**" means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "**Guarantee**" as a verb has a corresponding meaning.

"**Hazardous Materials**" means (a) any petroleum or petroleum products, radioactive materials, friable asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of

"hazardous substances", "hazardous waste", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", "toxic substances", "toxic pollutants", "contaminants", or "pollutants", or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, which is prohibited, limited or regulated by any Environmental Law.

"**Hazardous Materials Activity**" means any hazardous substances defined by the Comprehensive Environmental Response Compensation and Liability Act, 42 USCA 9601, et. seq., as amended ("CERCLA"), including any hazardous waste as defined under 40 C.F.R. Parts 260-270, gasoline or petroleum (including crude oil or any fraction thereof), asbestos or polychlorinated biphenyls.

"**HEA**" means the Higher Education Act of 1965, as amended, and any amendments or successor statutes thereto.

"**Historical Financial Statements**" means (a) the audited consolidated balance sheet of the Company Parties and their Subsidiaries for the most recent Fiscal Year ended, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, including the notes thereto, and (b) the unaudited consolidated balance sheet of the Company Parties and their Subsidiaries for the most recent Fiscal Quarter ended, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such Fiscal Quarter.

"**Holder**" means, as to any shares of Series G Preferred Stock, the holder thereof, unless such holder shall have presented such shares of Series G Preferred Stock to the Company for transfer and the transferee shall have been entered in the Company's register as a subsequent holder, in which case, "**Holder**" means such subsequent holder.

"**Indebtedness**" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all Funded Debt;

(b) net obligations under any Swap Agreement;

(c) all Guarantees in respect of Indebtedness of another Person; and

(d) all Indebtedness of the types referred to in clauses (a) through (c) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which any Company Party or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Company Party or such Subsidiary.

"**Intellectual Property**" means all trademarks, service marks, trade names, copyrights, patents, patent rights, franchises related to intellectual property, licenses related to intellectual property and other intellectual property rights.

"**Intercreditor Agreement**" means the intercreditor agreement of even date herewith executed and delivered by each applicable Company Party thereto, each of its applicable Subsidiaries, the First Lien Agent and the Second Lien Agent, pursuant to the Credit Agreements.

"**Investment**" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Capital Stock of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"**Investors**" has the meaning set forth in the preamble to this Agreement.

"**Joinder Agreement**" means a guarantee joinder agreement in a form and substance reasonably satisfactory to the Required Holders, delivered by any Person who becomes an Other Company Party after the date hereof.

"**Kaplan Acquisition**" shall mean the acquisition of certain assets and equity by the Company or its Subsidiaries under the Kaplan Purchase Agreement.

"**Kaplan Capital Expenditure Offset**" means $5,000,000 in capital expenditures for the four Fiscal Quarter period ending December 31, 2015 directly related to the Kaplan Acquisition and reasonably acceptable to the Required Holders and offset by cash on the Closing Date.

"**Kaplan Purchase Agreement**" has the meaning set forth in the recitals to this Agreement.

"**Kaplan Schools**" means the Schools to be acquired by the Company through the Kaplan Acquisition.

"**Lender**" means any of the lenders from time to time party to any of the Credit Agreements.

"**Letters of Credit**" means any letter of credit issued pursuant to the Credit Agreements.

"**Lien**" means (a) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing, and (b) in the case of Securities, any purchase option, call or similar right of a third party with respect to such Securities.

"**Loan**" means, individually, the Cadence Senior Revolver or the Monroe Term Loan, and collectively, the Cadence Senior Revolver or the Monroe Term Loan.

"**Material Adverse Effect**" means a material adverse effect on (a) the business operations, assets, properties or financial condition of the Company and its Subsidiaries taken as a whole, (b) the validity or enforceability of this Agreement or any of the other Preferred Documents or (c) the rights or remedies of the Holders hereunder or thereunder.

"**Material Contracts**" means any contract or agreement to which any Company Party is a party, the failure to comply with which would reasonably be expected to have a Material Adverse Effect.

"**Maximum Negative Consolidated Campus EBITDA Test**" means Consolidated EBITDA of the Company Parties and their Subsidiaries attributable solely to the individual campuses owned and operated by the Company Parties and their Subsidiaries, excluding, with the Required Holders' express written consent, new campuses that have been owned and operated for less than twenty-four (24) months.

"**Monroe Term Loan**" has the meaning set forth in the recitals to this Agreement.

"**Multiemployer Plan**" means any Plan that is a "multiemployer plan" within the meaning of Section 3(37) of ERISA.

"**Obligations**" means (a) with respect to the Subsidiaries (or any of them), all obligations (monetary or otherwise, whether absolute or contingent, matured or unmatured) of the Subsidiaries (or any of them) arising under or in connection with any Credit Document, including all fees payable under any Credit Document and the principal of and interest (including interest accruing during the pendency of any proceeding of the type described in Section 8.01(h), whether or not allowed in such proceeding) on the Loans, or (b) with respect to each Company Party other than the Subsidiaries, all obligations (monetary or otherwise, whether absolute or contingent, matured or unmatured) of such Company Party arising under or in connection with any Credit Document.

"**Organization Documents**" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and, if applicable, any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"**Other Company Parties**" means each of the Company's Subsidiaries identified as "**Other Company Parties**" on the signature pages hereto, and their permitted successors and assigns.

"**Participant**" has the meaning set forth in Section 9.06(c).

"**Patriot Act**" has the meaning set forth in Section 9.18.

"**PBGC**" means the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

"**Permitted Liens**" means each of the Liens permitted pursuant to Section 7.02.

"**Permitted Refinancing**" means any extension, renewal or replacement of any existing Indebtedness so long as any such renewal, refinancing and extension of such Indebtedness (a) has market terms and conditions, (b) has an average life to maturity that is greater than that of the Indebtedness being extended, renewed or refinanced, (c) does not include an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (d) remains subordinated, if the Indebtedness being refinanced or extended was subordinated to the prior payment of the Obligations, and (e) does not exceed in a principal amount the Indebtedness being renewed, extended or refinanced plus reasonable fees and expenses or capitalized interest incurred in connection therewith.

"**Permitted Sponsor Management Fees**" means, so long as no Event of Default has occurred and is continuing, fees payable by the Company Parties to Sponsor not to exceed $500,000 in the aggregate during any fiscal year; provided, that any such management fees that are prevented from being paid during the existence of an Event of Default, shall continue to accrue and may be paid when such Event of Default is cured or waived; provided, further, that the Required Holders shall have expressly consented in writing to the any such fee to be paid following the Closing Date.

"**Person**" means any individual, partnership, joint venture, firm, corporation, limited liability company, association, trust or other enterprise or any Governmental Authority.

"**Plan**" means any "employee benefit plan" (as defined in Section 3(3) of the ERISA) that is subject to Title IV of ERISA, Section 412 of the Code or Sections 302 or 303 of ERISA, that is or was within any of the preceding six (6) plan years sponsored, maintained or contributed to (or to which there is or was during such six (6)-year period an obligation to contribute or to make payments) by any Company Party, Subsidiary of a Company Party or an ERISA Affiliate, or in respect of which any Company Party, Subsidiary of a Company Party or an ERISA Affiliate has any obligation or liability, actual, contingent or otherwise.

"**Preferred Documents**" means (a) this Agreement, (b) the Dividend Reserve Agreement, (c) Sponsor Backstop Agreement, (d) any certificates evidencing the Purchased Shares and (e) all other agreements, documents and instruments executed and/or delivered on the Closing Date or any time thereafter by any Company Party (including any Joinder Agreement) or Sponsor or its Affiliate, on the one hand, and any Holder, on the other hand, pursuant to or in connection with this Agreement.

"**Private Educational Loans**" has the meaning given the term in Section 140 of the Truth in Lending Act.

"**Program Integrity Rules**" means those DOE regulations that went into effect on July 1, 2011, as published in final form in the Federal Register on October 29, 2010, provided, however, that this definition does not include any portion of such regulations found by a court of competent jurisdiction to be invalid.

"**Program Participation Agreement**" has the meaning set forth in 34 C.F.R. §668.14.

"**Purchase Price**" has the meaning set forth in Section 2.01.

"**Purchased Shares**" has the meaning set forth in the recitals to this Agreement.

"**Real Property**" means, with respect to any Person, all right, title and interest of such Person (including, without limitation, any leasehold estate) in and to a parcel of real property owned, leased or operated by such Person together with, in each case, all improvements and appurtenant fixtures, equipment, personal property, easements and other property and rights incidental to the ownership, lease or operation thereof.

"Regulation U" means Regulation U of the Board of Governors as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"Regulation X" means Regulation X of the Board of Governors as from time to time in effect and any successor to all or a portion thereof establishing margin requirements.

"**Related Parties**" means, with respect to any specified Person, such Person's Affiliates and the directors, officers, stockholders, members, employees, agents, trustees, advisors of such Person and any Person that possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise.

"**Release**" means a "release", as such term has the meaning set forth in CERCLA.

"**Reportable Event**" means an event described in Section 4043 of ERISA and the regulations thereunder (excluding any such event for which the notice requirement has been waived by the PBGC pursuant to applicable regulations or otherwise).

"**Required Holders**" means, at any date, Holders having or holding a majority of the outstanding shares of Series G Preferred Stock.

"**Restricted Payment**" means, with respect to any Person, (a) the declaration or payment of any dividend on, or the making of any payment or distribution on account of, or setting apart assets for a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of, any class of Capital Stock of such Person or any warrants or options to purchase any such Capital Stock, whether now or hereafter outstanding, or the making of any other distribution in respect thereof, either directly or indirectly, whether in cash or property, (b) any payment of a management fee (or other fee of a similar nature) by such Person to any holder of its Capital Stock or any Affiliate thereof and (c) the payment or prepayment of principal of, or premium or interest on, any Indebtedness subordinate to the Obligations unless such payment is permitted under the terms of the subordination agreement applicable thereto.

"**School**" means a postsecondary institution of higher education consisting of a main campus and any additional locations, campuses or branches thereof operated by the Company Parties or any of their respective Subsidiaries identified by a single six-digit Office of

Postsecondary Education Identification (OPEID) number issued by the DOE or approved by any Educational Agency. "**School**" includes both the ECA Schools and the Kaplan Schools.

"**Second Lien Credit Agreement**" means that that certain Credit Agreement, dated of even date herewith, among Education Corporation of Alabama, Virginia College, LLC and New England College of Business and Finance, LLC, as Subsidiaries, the Company, certain subsidiaries of the Company Parties thereto from time to time, the financial institutions from time to time party thereto as Lenders thereunder and Monroe Capital Management Advisors, LLC, as Administrative Agent and Collateral Agent (as amended, modified or supplemented from time to time).

"**Second Lien Credit Documents**" means the Second Lien Credit Agreement and the other "Credit Documents" referred to in the Second Lien Credit Agreement.

"**Securities**" means any stock, shares, partnership interests, limited liability company interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement (e.g., stock appreciation rights), options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Series G Dividend Reserve**" has the meaning set forth in the Dividend Reserve Agreement.

"**Series G Preferred Stock**" has the meaning set forth in the recitals to this Agreement.

"**Series G Redemption Amount**" has the meaning set forth in the Charter.

"**Significant Event**" means:

(a) any failure of the Company, in any contiguous six (6)-month period (with it being understood and agreed that any cure at any time prior to the end of such contiguous six (6)-month period shall mean no such Significant Event has occurred), to meet any of its payment or other obligations to the Holders under the Preferred Documents with respect to payment of (i) dividends (with it being understood and agreed no such failure shall be deemed to occur with respect to dividends deposited in the dividend reserve account established pursuant to the Dividend Reserve Agreement unless the Company takes some action after the date hereof to cause such failure or if such dividends are not paid due to Department of Education restrictions) or (ii) the Deferred Investment Fee;

(b) any failure by a School to comply with the composite score factors of financial responsibility set forth in 34 C.F.R. Part 668, Subpart L, including where applicable satisfying (x) the "zone alternative" requirements set forth at 34 C.F.R.

§ 668.175(d) or (y) any requirement to post for a letter of credit pursuant to the "Alternative Standards and Requirements" codified at 34 C.F.R. § 668.175;

(c) for the period in which the Gainful Employment Rule is in force, any failure to maintain compliance with the Gainful Employment Rule such that the Schools' educational programs representing more than 29% of the Student Enrollments fail to satisfy the Gainful Employment Minimum Standards, in the case of the same programs for two consecutive federal fiscal years, based on a final determination with respect to such programs by the DOE;

(d) any failure by a School to maintain DOE Approval, eligibility to participate in Title IV Programs, or any failure by a School to maintain institutional Accreditations for any campus;

(e) any failure by a School to comply with the ban on incentive compensation, as set forth in 34 C.F.R. § 668.14(b)(22);

(f) any failure maintain compliance with the "90/10 Rule" as measured on a single fiscal year basis under 34 C.F.R. §§ 668.14 and 668.28;

(g) any failure to maintain all Cohort Default Rates within the standards required under applicable DOE regulations to maintain eligibility to participate in all Title IV Programs, including the requirements set forth 34 C.F.R., Part 668, Subparts M and N;

(h) the loss of any program(s) at any School(s) in any Fiscal Year, and the impacted programs at such School(s) produced in aggregate more than $5,000,000 of the Company's Consolidated EBITDA for the twelve (12)-month period immediately preceding the date of such occurrence, unless the Company otherwise had been in compliance with all financial covenants described in Section 8.8 of the Credit Agreement and would remain in compliance giving effect to such loss of Consolidated EBITDA;

(i) in the event any of the following occur at any School in any Fiscal Year and the impacted produced in aggregate more than $5,000,000 of the Company's Consolidated EBITDA for the twelve (12)-month period immediately preceding the date of such occurrence:

(i) any failure by a School to maintain programmatic Accreditations for any program or any state approval of a program that allows the School offer its educational program or allows graduates of such School to take the examinations necessary to qualify to work in the field for which they were trained or to otherwise be licensed in such field;

(ii) any failure by a School to maintain compliance with Program Participation Agreement requirements under 34 C.F.R. § 668.14 to the extent not otherwise covered in this definition of Significant Event;

(iii) any breach or failure of a Company Party to comply with or satisfy its respective obligations set forth in the below sections of the Transaction Documents; provided, that such Company Party shall have six (6) months to cure such failure, (to the extent curable); provided, further, that no other failure by such Company Party or any other Company Party shall have occurred (irrespective of whether timely cured) within any contiguous six (6)-month period:

(A) Section 5.23 (Governmental Authority and Licensing; Educational Approvals; Compliance with Educational Laws), provided, that such breach is material and adverse to such Company Party or to the Holders,

(B) Section 6.03 (Maintenance of Existence; Compliance with Laws, etc.),

(C) Section 6.06 (Maintenance of Eligibility),

(D) Section 6.07 (Title IV Disbursements),

(E) Section 6.23 (Governmental Authority and Licensing; Education Agency Approvals; Compliance with Educational Laws) of the Credit Agreement, provided, that such breach is material and adverse to such Company Party or to the Holders,

(F) Section 7.2 (Maintenance of Business) of the Credit Agreement, to the extent such items are not otherwise covered in this definition of Significant Event,

(G) Clause (b) of Section 7.8 (Compliance with Laws and Material Contracts) of the Credit Agreement;

(iv) the occurrence of an "Event of Default" under this Agreement pursuant to subsection (l) (Compliance with Educational Laws) of Section 8.01 (Listing of Events of Default), to the extent such noncompliance giving rise to the Event of Default is not otherwise addressed in this definition of Significant Event;

(v) the occurrence of an "Event of Default" under the Credit Agreement pursuant to subsection (n) (Title IV), subsection (o) (Emergency Action), subsection (p) (Educational Approvals), subsection (r) (Regulatory Violation) of Section 9.1 thereof (Events of Default);

(vi) any breach or failure of a Company Party to comply with or satisfy its respective obligations set forth in the below sections of the Transaction Documents; provided, that such Company Party shall have thirty (30) days to cure such failure, (to the extent curable); provided, further, that no other failure by such Company Party or any other Company Party shall have

occurred (irrespective of whether timely cured) within any contiguous twelve (12)-month period:

(A) Section 6.14 (Use of Proceeds),

(B) Section 7.08 (Financial Covenants),

(C) Section 8.7 (Use of Proceeds) of the Credit Agreement,

(D) Section 8.8 (Financial Covenants) of the Credit Agreement, or

(E) Section 8.9 (Capital Expenditures) of the Credit Agreement; or

(j) the occurrence of a "WSP Default" under that certain backstop letter agreement, dated of even date herewith, by and among the WSP Entities (as defined therein), Monroe Capital LLC and Monroe Capital Management Advisors, LLC;

provided, however, that notwithstanding anything to the contrary set forth above, any reference to any cure period shall not be applicable in the event that more than one of the foregoing event has occurred and is continuing at any given time.

"**Significant Regulatory Event**" means, with respect to a Company Party, any of its Subsidiaries or any School, as the context may require, either (1) in the event any of the following occur at any School in any fiscal year and the impacted campuses and/or programs at such Schools produced in aggregate more than $5,000,000 of Consolidated EBITDA for the twelve month period immediately preceding the date of such occurrence, unless the Company otherwise had been in compliance with all financial covenants described in Section 7.07 of this Agreement and would remain in compliance giving effect to such loss of Consolidated EBITDA: (a) a failure of any School to maintain its eligibility to participate in Title IV Programs (including without limitation any suspension or termination of Title IV funding, but excluding any temporary interruption of any Educational Approval associated with the transactions contemplated by the Kaplan Purchase Agreement, but such temporary interruption shall not last more than ten (10) Business Days); (b) a failure of a Company Party, any of its Subsidiaries or any School to maintain in effect any of its institutional or programmatic Accreditations necessary for the relevant School to conduct its operations and offer its educational programs or for graduates of such School to take the examinations necessary to qualify to work in the field for which they were trained or to otherwise be licensed in such field; (c) a failure of a Company Party, any of its Subsidiaries or any School to maintain in effect its Educational Approvals, excluding any temporary interruption of any Educational Approval associated with the transactions contemplated by the Kaplan Purchase Agreement, but such temporary interruption shall not last more than sixty (60) Business Days; (d) any final (after all appeals are exhausted, except in matters where Title IV eligibility has been limited, suspended or terminated pending the appeal, in which case it shall be at the date of imposition of such as limitation, suspension or termination) program review determination or final (after all appeals are exhausted, except in matters where Title IV eligibility has been limited, suspended or terminated pending the appeal, in which case it shall be at the date of imposition of such as limitation, suspension or termination) audit determination asserting that any institution, campus, or material educational program owned or operated by a Company Party, any of its Subsidiaries, or any School is not, or

was not, eligible for Title IV participation for any period of time; or (e) notification from the DOE that any single educational program or group of educational programs loses eligibility for any reason; provided, however that the programs currently being taught out and listed in Exhibit I shall be disregarded for purposes of determining whether a Significant Regulatory Event has occurred due to program closures; (2) the final (after exhaustion of all appeals) imposition of any fine, liability, disallowance, or other sanction instituted against a Company Party, any of its Subsidiaries or any School by the DOE or any other Educational Agency, any Consumer Protection Agency, or other governmental agency, in an amount equal to or greater than $500,000 individually or $1,000,000 in the aggregate, in each case, in any Fiscal Year, provided, that to the extent the Company certifies to the Required Holders that a Company Party, any of its Subsidiaries or School is owed an indemnity by any Person (other than the Company Parties and their Affiliates) in respect of such fine, liability, disallowance or sanction, for purposes of this definition, such fine, liability, disallowance or sanction shall be reduced by the amount of such indemnity; provided, however, that if such Company Party, Subsidiary or School has not received payment of such indemnity within 180 days after the final imposition of such fine, liability, disallowance or sanction, the full amount thereof shall be reinstated for purposes of this definition; or (3) any imposition of Reimbursement or Heightened Cash Monitoring Level II Procedures (as defined at 34 C.F.R. Sections 668.162(d) and (e)(2)) on any School.

"**Single Employer Plan**" means any Plan that is not a Multiemployer Plan.

"**Solvent**" or "**Solvency**" means, with respect to any Person as of a particular date, that on such date (a) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (b) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature in their ordinary course, (c) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (d) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (e) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"**Sponsor**" means, collectively, Willis Stein & Partners III, L.P., Willis Stein & Partners Dutch III-A, L.P., Willis Stein & Partners Dutch III-B, L.P. and Willis Stein & Partners III-C, L.P. , each a Delaware limited partnership, and each of their respective investment Affiliates.

"**Sponsor Backstop Agreement**" means that certain agreement by and among Sponsor and/or one of its Affiliates, the Company and Investors, pursuant to which Sponsor and/or one of its Affiliates shall backstop certain regulatory obligations of the Company Parties, including those which arise in connection with the Series G Dividend Reserve, substantially in the form of Exhibit E.

"**Sponsor Series F Investment**" means that certain equity investment to be made by Sponsor and/or its Affiliates, as more fully set forth in that certain Exchange and Contribution Agreement, dated as of the date hereof, by and between Sponsor and the Company.

"**State Educational Agency**" means any state educational licensing body that provides a license or authorization necessary for the School to provide postsecondary education in that state, including, but not limited to any authorization that allows graduates of an education program to take the examinations necessary to qualify to work in the field for which they were trained or to otherwise be licensed in such field.

"**Stockholders Agreement**" means that certain Amended and Restated Stockholders Agreement, dated as of even date herewith, by and among the Company, Sponsor and certain of its Affiliates and certain other stockholders of the Company.

"**Student Enrollments**" means the aggregate number, as of the last day of the most recently completed fiscal month, of full-time and part-time students enrolled and in attendance in all Schools pursuant to enforceable enrollment contracts or similar agreements.

"**Subordinated Debt**" means any Indebtedness of the Company Parties or any of their Subsidiaries that by its terms is expressly subordinated in right of payment to the prior payment of the Obligations under the Transaction Documents.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than fifty percent (50%) of the Voting Stock is at the time owned or controlled, directly or indirectly, by that Person, or the accounts of which would be consolidated with those of such Person in its consolidated financial statements in accordance with GAAP, if such statements were prepared as of such date, or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a "qualifying share" of the former Person shall be deemed to be outstanding. Unless otherwise expressly provided, all references herein to a "**Subsidiary**" shall mean a Subsidiary of a Company Party.

"**Swap Agreement**" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, currency swap transactions, cross-currency rate swap transactions, currency options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options or warrants to enter into any of the foregoing), whether or not any such transaction is governed by, or otherwise subject to, any master agreement or any netting agreement, and (b) any and all transactions or arrangements of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement (or similar documentation) published from time to time by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such agreement or

documentation, together with any related schedules, a "**Master Agreement**"), including any such obligations or liabilities under any Master Agreement.

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other similar charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Title IV**" means Chapter 28, Subchapter Title IV of the HEA and any amendments or successor statutes thereto. For purposes of clarity, references herein to "**Title IV of ERISA**" shall not refer to Chapter 28, Subchapter Title IV of the Higher Education Act of 1965 as described above, but shall instead refer to Title IV of ERISA.

"**Title IV Funds Account**" means any bank account of any School holding Title IV Program funds on behalf of the DOE pending disbursement of such funds to eligible students under the terms of 34 C.F.R. §668.163.

"**Title IV Letter of Credit**" means a letter of credit required by the DOE to enable a Company Party, any of its Subsidiaries or a School to satisfy the DOE's requirements of financial responsibility necessary for its continued eligibility to participate in Title IV Programs.

"**Title IV Programs**" means the federal student financial assistance programs authorized by Title IV, including in particular those programs as listed in 34 C.F.R. § 668.1(c) or any successor regulation.

"**Total Debt to EBITDA Ratio**" means, as of the last day of any Fiscal Quarter, the ratio of (a) Consolidated Funded Debt as of such day (net of (i) the face amount of all cash collateral and backstop letters of credit (up to the face amount of the applicable letter of credit) or other credit support acceptable to the letter of credit issuer, in each case, constituting credit support for outstanding letters of credit, to the extent such letters of credit are included in Consolidated Funded Debt and (ii) outstanding Revolving Loans under the First Lien Credit Agreement to the extent fully cash collateralized in accordance with the terms and conditions of the First Lien Credit Agreement) to (b) Consolidated EBITDA for the four consecutive Fiscal Quarter period ending on such day.

"**Transaction Documents**" means each of the documents executed and/or delivered in connection with the Transactions, including without limitation, the Credit Documents and the Preferred Documents; provided that no document shall be considered a Transaction Document for purposes of this Agreement unless an Investor is party to such Transaction Document.

"**Transactions**" means (i) the repayment in full of the indebtedness owing by the Company Parties under the Existing Credit Agreement as defined in the Second Lien Credit Agreement, (ii) the entering into of the Credit Documents, (iii) the transactions contemplated hereunder including the issuance of the Series G Preferred Stock, (iv) the Sponsor's investment in Company through the contribution of capital stock of SMI Group Ultimate Holdings, Inc. owned by Sponsor, and (v) the payment of fees and expenses associated with the foregoing.

"**U.S.**" and "**United States**" means the United States of America.

"**UCC**" means the Uniform Commercial Code as from time to time in effect in the State of Illinois.

"**Unfinanced Consolidated Capital Expenditures**" means, for any period of determination, the Company Parties and their Subsidiaries' Consolidated Capital Expenditures not made with the proceeds of borrowings or other Indebtedness or of any issuance of Capital Stock of the Company Parties or such Subsidiaries.

"**Unfunded Current Liability**" means, with respect to any Plan, the amount, if any, by which the present value of the accrued benefits under the Plan as of the close of its most recent plan year, determined in accordance with Statement of Financial Accounting Standards No. 87 and ASC 715 as in effect on the date hereof (or any successor standards as in effect from time to time), based upon the actuarial assumptions that would be used by the Plan's actuary in a termination of the Plan, exceeds the fair market value of the assets allocable thereto.

"**Voting Stock**" means, with respect to any Person, shares of such Person's Capital Stock having the right to vote for the election of directors (or Persons acting in a comparable capacity) of such Person under ordinary circumstances.

SECTION 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Preferred Document, unless otherwise specified herein or in such other Preferred Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words "**herein**", "**hereto**", "**hereof**" and "**hereunder**" and words of similar import when used in any Preferred Document shall refer to such Preferred Document as a whole and not to any particular provision thereof.

(c) Article, Section, Exhibit and Schedule references are to the Preferred Document in which such reference appears.

(d) The term "**including**" is by way of example and not limitation.

(e) The term "**documents**" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(f) In the computation of periods of time from a specified date to a later specified date, the word "**from**" means "from and including"; the words "to" and "until" each mean "to but excluding"; and the word "through" means "to and including".

(g) Section headings herein and in the other Preferred Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Preferred Document.

SECTION 1.03 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied in a manner consistent with that used in preparing the Historical Financial Statements, except as otherwise specifically prescribed herein. No change in GAAP shall be given effect for purposes of measuring compliance with any provision of Article IX unless the Company and the Required Holders agree to modify such provisions to reflect such changes in GAAP and, unless such provisions are modified, all financial statements, Compliance Certificates and similar documents provided hereunder shall be provided by the Company together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP (and the Company Parties and the Holders agree to enter into good faith negotiations to modify such provisions to reflect such changes in GAAP and preserve the original intent of such provisions).

SECTION 1.04 Rounding. Any financial ratios required to be maintained or complied with by the Company pursuant to this Agreement (or required to be satisfied in order for a specific action to be permitted under this Agreement) shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.05 References to Agreements, Laws, etc. Unless otherwise expressly provided herein, (a) references to Organization Documents, agreements (including the Preferred Documents) and other Contractual Obligations shall be deemed to include all subsequent amendments, restatements, amendment and restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendment and restatements, extensions, supplements and other modifications are permitted by any Preferred Document; and (b) references to any Applicable Law or Educational Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law or Educational Law, as applicable.

SECTION 1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Central Time (daylight or standard, as applicable).

SECTION 1.07 Timing of Payment of Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.

SECTION 1.08 Corporate Terminology. Any reference to officers, shareholders, stock, shares, directors, boards of directors, corporate authority, articles of incorporation, bylaws or any other such references to matters relating to a corporation made herein or in any other Preferred Document with respect to a Person that is not a corporation shall mean and be references to the comparable terms used with respect to such Person.

ARTICLE II
Sale and Purchase of Series G Preferred Stock

SECTION 2.01 Sale and Purchase of Series G Preferred Stock. At the Closing referred to in Section 2.02, the Company hereby agrees to issue and sell to each Investor and, subject to all of the terms and conditions hereof and in reliance on the representations and warranties set forth herein, such Investor agrees to purchase, that number of Purchased Shares set forth opposite such Investor's name on Annex I, at a purchase price of $1,000 per share, for an aggregate purchase price paid by all Investors equal to $40,000,000 (the "**Purchase Price**").

SECTION 2.02 Closing. The closing of the purchase and sale of the Purchased Shares (the "**Closing**") will take place by email exchange of counterpart signature pages at 10:00 am Central Time on the Closing Date. At the Closing, the Company will deliver to each Investor that number of Purchased Shares set forth opposite such Investor's name on Annex I to be purchased by Investors against payment by Investors of that portion of the Purchase Price set forth opposite such Investor's name on Annex I in immediately available funds to an account designated by the Company. The Purchased Shares will be issued to each such Investor on the Closing Date and registered in its name in the Company's records.

ARTICLE III
Conditions Precedent to the Closing

Investors' obligation to purchase the Purchased Shares pursuant to this Agreement is subject to the satisfaction of the following conditions precedent on or before the Closing:

SECTION 3.01 Preferred Documents. Investors shall have received the following documents, duly executed by an Authorized Officer of the Company and each other Company Party, as applicable: (a) this Agreement, (b) the Dividend Reserve Agreement and (c) the Stockholders Agreement.

SECTION 3.02 Charter; Stockholders Agreement. Investors shall have received (a) the Charter, in the form of Exhibit F attached hereto, duly filed with the Secretary of State for the State of Delaware, and the Charter shall be in full force and effect and no term or condition thereof shall have been amended, modified or waived except with Investors' prior written consent, and (b) a true, correct and complete copy of the Amended and Restated Stockholders Agreement, in the form of Exhibit G attached hereto, duly executed by an Authorized Officer of the Company, the Sponsor and all of the other requisite signatories thereto, and no term or condition thereof shall have been amended, modified or waived except with Investors' prior written consent.

SECTION 3.03 Structure. Investors shall be reasonably satisfied on the Closing Date with all aspects of the Transactions, including, without limitation (i) the capital, corporate, and tax structure of the Company Parties and their Subsidiaries after giving effect to the Transactions, (ii) the terms and provisions of each of the Transaction Documents and (iii) the Sponsor Series F Investment.

SECTION 3.04 Secretary's Certificates. Investors shall have received a certificate for each Company Party, dated the Closing Date, duly executed and delivered by such Company Party's secretary or assistant secretary, managing member or general partner, as applicable, as to:

(a) resolutions of each such Person's board of managers/directors (or other managing body, in the case of a Person that is not a corporation) then in full force and effect expressly and specifically authorizing, to the extent relevant, all aspects of the Preferred Documents and the other Transaction Documents applicable to such Person and the execution, delivery and performance of each Preferred Document and Transaction Document, in each case, to be executed by such Person;

(b) the incumbency and signatures of its Authorized Officers and any other of its officers, managing member or general partner, as applicable, authorized to act with respect to each Preferred Document and the Transaction Documents to be executed by such Person; and

(c) each such Person's Organization Documents, as amended, modified or supplemented as of Closing Date, certified by the appropriate officer or official body of the jurisdiction of organization of such Person,

which certificates shall provide that Investors may conclusively rely thereon until it shall have received a further certificate of the secretary, assistant secretary, managing member or general partner, as applicable, of any such Person canceling or amending the prior certificate of such Person.

SECTION 3.05 Other Documents and Certificates.

(a) Investors shall have received copies of the following documents and certificates, each of which shall be dated the Closing Date and properly executed by an Authorized Officer of each applicable Company Party, each in form and substance reasonably satisfactory to Investors:

(i) a certificate of an Authorized Officer of the Company, certifying as to:

(A) the consummation of the Transactions, all in accordance with Applicable Laws and the Transaction Documents, executed copies of the principal Credit Documents which shall be attached thereto and certified as being true, complete and correct in all material respects, and without default and in full force and effect; and

(B) the receipt of all required approvals and consents of all Governmental Authorities and (except as would not result in a Material Adverse Effect) other third parties with respect to the consummation of the Transactions (if any) and the transactions contemplated by the Transaction Documents, each of which shall be attached thereto and certified as being true, complete and correct copies thereof.

(ii) (A) certificates of good standing with respect to each Company Party, each dated within a recent date prior to the Closing Date, such certificates to be issued by the appropriate officer or official body of the jurisdiction of organization of such

Company Party, which certificate shall indicate that such Company Party is in good standing in such jurisdiction, and (B) certificates of good standing with respect to each Company Party, each dated within a recent date prior to the Closing Date, such certificates to be issued by the appropriate officer of the jurisdictions where such Company Party is qualified to do business as a foreign entity, which certificate shall indicate that such Company Party is in good standing in such jurisdictions.

(b) Investors shall have received copies of the following documents and certificates, each of which shall be dated the Closing Date and properly executed by Sponsor or its Affiliates, the applicable Company Party and/or any other parties thereto, each in form and substance reasonably satisfactory to Investors:

(i) such documents and certificates executed in connection with the Sponsor Series F Investment;

(ii) the Sponsor Backstop Agreement; and

(iii) an irrevocable proxy, substantially in the form of Exhibit H (the "**Sponsor Irrevocable Proxy**").

SECTION 3.06 Solvency. The Company and its Subsidiaries, on a consolidated basis, are Solvent immediately prior to the Closing, and Investors are reasonably satisfied that, after giving effect to the Transactions and the other transactions related thereto, after giving effect to the Transactions and the other transactions related thereto, the Company and its Subsidiaries, on a consolidated basis, will continue to be Solvent.

SECTION 3.07 Financial Information. Investors shall have received a certificate in form and substance reasonably satisfactory to them, dated the Closing Date and properly executed by an Authorized Officer of the Company, attaching the following documents and reports (each in form and substance reasonably satisfactory to Investors):

(a) the Historical Financial Statements;

(b) a pro forma equity ownership table of the Company and an organizational chart of the Company and its Subsidiaries; and

(c) a sources and uses statement and flow of funds memorandum which reflects (i) the sources of all funds to be used by the Company Parties to consummate the Transactions and to pay all transaction expenses incurred in connection therewith (including the fees, costs and expenses due and payable pursuant to Section 9.05) and (ii) all uses of such funds.

The documents and reports delivered in clauses (c) and (d) above shall be certified by such Authorized Officer to be true, complete and correct as of the Closing Date.

SECTION 3.08 Payment of Outstanding Indebtedness. (a) On the Closing Date, the Company Parties and each of their respective Subsidiaries shall have no outstanding Indebtedness other than the Loans under the Credit Agreements and Indebtedness permitted under Section 7.01, and Investors shall have received copies of all documentation and

instruments evidencing the discharge of all Indebtedness paid off in connection with the Transactions, and the transactions contemplated by this Agreement, and (b) all Liens (other than Permitted Liens) securing payment of any such Indebtedness shall have been released and Investors shall have received all form UCC-3 termination statements and other instruments as may be reasonably requested by Investors in connection therewith.

SECTION 3.09 Material Adverse Effect. There has been no Material Adverse Effect since April 30, 2015.

SECTION 3.10 Kaplan Purchase Agreement. The transactions contemplated by the Kaplan Purchase Agreement shall have been consummated prior to, or shall be consummated contemporaneously with, the Closing.

SECTION 3.11 Fees and Expenses. Investors shall have received, for its own respective account, the reasonable fees, costs and expenses due and payable to such Person pursuant to Section 9.05 (including the reasonable fees, disbursements and other charges of counsel) for which invoices have been presented prior to the Closing Date.

SECTION 3.12 Patriot Act Compliance and Reference Checks. Investors shall have received completed reference checks with respect to each Company Party's senior management, and any required Patriot Act compliance, the results of which are satisfactory to Investors in their sole discretion.

SECTION 3.13 No Adverse Actions. Investors shall be reasonably satisfied that there is no (a) litigation, investigation or proceeding (judicial or administrative) pending or threatened in writing against any Company Party, or any of their respective Subsidiaries by any Governmental Authority or other Person except to the extent as would not give rise to a Material Adverse Effect or (b) injunction, writ or restraining order restraining or prohibiting the Transactions.

SECTION 3.14 No Default; Representations and Warranties. Each Investor's obligation to purchase the Purchased Shares pursuant to this Agreement is subject to the satisfaction of the additional condition precedent that on the Closing Date, both immediately before and after giving effect to the consummation of the Transactions: (i) no Default or Event of Default shall have occurred and be continuing, (ii) all representations and warranties made by each Company Party contained herein or in the other Preferred Documents shall be true and correct in all material respects, in each case, with the same effect as though such representations and warranties had been made on and as of the date of the Closing Date (except where such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date) and (iii) no injunction, writ, restraining order, or other order of any nature restricting or prohibiting, directly or indirectly, the Closing shall have been issued and remain in force by any Governmental Authority against any Company Party.

ARTICLE IV
Representations, Warranties and Agreements of Investors

In order to induce the Company Parties to enter into this Agreement and to induce the Company to issue and sell the Purchased Shares as provided for herein, each Investor, severally and not jointly with the other Investors, make the following representations and warranties to, and agreements with, the Company Parties, all of which shall survive the execution and delivery of this Agreement and the issuance and sale of the Purchased Shares:

SECTION 4.01 Entity Status. Such Investor is a duly organized or formed and validly existing corporation or other registered entity in good standing under the laws of the jurisdiction of its organization and has the corporate or other organizational power and authority to own its property and assets and to transact the business in which it is engaged.

SECTION 4.02 Entity Power and Authority. Such Investor has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Preferred Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Preferred Documents to which it is a party. Such Investor has duly executed and delivered the Preferred Documents to which it is a party and such Preferred Documents constitute the legal, valid and binding obligation of such Investor enforceable in accordance with their terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law).

SECTION 4.03 No Violation. None of (a) the execution, delivery and performance by such Investor of the Preferred Documents to which it is a party and compliance with the terms and provisions thereof, (b) the consummation of the Transactions, or (c) the consummation of the other transactions contemplated hereby or thereby on the relevant dates therefor will (i) contravene any applicable provision of any material Applicable Law of any Governmental Authority or (ii) violate any provision of the Organization Documents of Investor.

SECTION 4.04 Litigation. There is no pending or, to the knowledge of such Investor, threatened, litigation, action or proceeding which purports to affect the legality, validity or enforceability of any Preferred Document or the Transactions.

SECTION 4.05 Approvals, Consents, etc. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person, and no consent or approval under any contract or instrument (other than (a) those that have been duly obtained or made and which are in full force and effect, or if not obtained or made, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect and (b) the filing of UCC financing statements and other equivalent filings for foreign jurisdictions) is required for the consummation of the Transactions or the due execution, delivery or performance by Investor of any Preferred Document to which it is a party. There does not exist any judgment, order, injunction or other restraint issued or filed with respect to the transactions contemplated by the Transaction Documents, the consummation of the Transactions, the sale of the Purchased Shares or the performance by the Investor of its obligations under the Preferred Documents.

SECTION 4.06 Investment Intent. Investor is acquiring the Purchased Shares for such Investor's own account for investment purposes and with no intention of distributing or reselling the Purchased Shares or any part thereof in any transaction that would constitute a "distribution" within the meaning of the Securities Act. Such Investor acknowledges that the Purchased Shares have not been registered under the Securities Act and that the Company is under no obligation to file a registration statement or similar filing with the Securities and Exchange Commission or any state agency with respect to the Purchased Shares.

SECTION 4.07 Investor's Status. Such Investor (a) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its investment in the Purchased Shares; (b) is able to bear the complete loss of its investment in the Purchased Shares; (c) has had the opportunity to ask questions of the Company and the management of the Company concerning the terms and conditions of the Series G Preferred Stock and the Company's business, (d) has had the opportunity to obtain additional information about the Company and its business and all of such Investor's questions have been answered to its satisfaction; and (e) is an accredited investor as defined in Rule 501(a) under the Securities Act.

SECTION 4.08 No Bankruptcy Filings. Such Investor has never filed for relief in bankruptcy or had entered against it any order for relief in bankruptcy.

SECTION 4.09 No Title IV Liability. Since the Compliance Date, neither such Investor nor any Person that exercises substantial control over such Investor, or member of such Person's family, alone or together, (i) exercises or has exercised substantial control over another school or third-party servicer (as that term is defined in 34 C.F.R. § 668.2) that owes a liability for a violation of a Title IV Program requirement or (ii) owes a liability for a Title IV Program violation.

SECTION 4.10 No Crime Involving Title IV. Since the Compliance Date, the Investor has not pled guilty to, pled nolo contendere to or been found guilty of, a crime involving the acquisition, use or expenditure of funds under the Title IV Programs or been judicially determined to have committed fraud involving funds under the Title IV Programs nor has such Investor or any such Investor-owned schools knowingly employed any person who has pled guilty to, pled nolo contendere to or been found guilty of, a crime involving the acquisition, use or expenditure of funds under the Title IV Programs or been judicially determined to have committed fraud involving funds under the Title IV Programs.

SECTION 4.11 No Crime Involving Government Funds. Since the Compliance Date, neither such Investor nor any school owned by such Investor has knowingly employed in a capacity involving administration of funds under the Title IV Programs or the receipt of funds under the Title IV Programs, any individual who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use or expenditure of federal, state or local government funds, or has been administratively or judicially determined to have committed fraud or any other violation of law involving federal, state or local government funds.

SECTION 4.12 Brokers. No agent, broker, finder or investment or commercial banker, or other Person engaged by or acting on behalf of such Investor in connection with the

negotiation, execution or performance of this Agreement is or will be entitled to any brokerage or finder's or similar fee or other commission as a result of this Agreement.

ARTICLE V
Representations, Warranties and Agreements of the Company Parties

In order to induce Investors to enter into this Agreement and to induce Investors to purchase the Purchased Shares as provided for herein, the Company make the following representations and warranties to, and agreements with, Investors, all of which shall survive the execution and delivery of this Agreement and the issuance and sale of the Purchased Shares.

SECTION 5.01 Entity Status. Each Company Party (a) is a duly organized or formed and validly existing corporation or other registered entity in good standing under the laws of the jurisdiction of its organization and has the corporate or other organizational power and authority to own its property and assets and to transact the business in which it is engaged as now conducted and as proposed to be conducted and (b) has duly qualified and is authorized to do business and is in good standing in all jurisdictions where it does business or owns assets, except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.02 Entity Power and Authority. Each Company Party has the corporate or other organizational power and authority to execute, deliver and carry out the terms and provisions of the Preferred Documents to which it is a party and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Preferred Documents to which it is a party. Each Company Party has duly executed and delivered the Preferred Documents and each other Transaction Document to which it is a party and such Transaction Documents constitute the legal, valid and binding obligation of such Company Party enforceable in accordance with their terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization and other similar laws relating to or affecting creditors' rights generally and general principles of equity (whether considered in a proceeding in equity or law).

SECTION 5.03 No Violation. None of (a) the execution, delivery and performance by any Company Party of the Preferred Documents to which it is a party and compliance with the terms and provisions thereof, (b) the consummation of the Transactions, or (c) the consummation of the other transactions contemplated hereby or thereby on the relevant dates therefor will (i) contravene any applicable provision of any material Applicable Law or Educational Law of any Governmental Authority or Educational Agency, (ii) result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien upon any of the property or assets of any Company Party (other than Liens created under the Credit Documents) pursuant to, (A) the terms of any material indenture, loan agreement, lease agreement, mortgage or deed of trust, or (B) any other Material Contract, in the case of either clause (A) or (B) to which any Company Party is a party or by which it or any of its property or assets is bound or (iii) violate any provision of the Organization Documents of any Company Party, except with respect to any conflict, creation, breach or contravention or default (but not creation of Liens) referred to in

clause (i), (ii)(A) or (ii)(B), to the extent that such conflict, breach, contravention or default would not reasonably be expected to have a Material Adverse Effect.

SECTION 5.04 No Litigation or other Adverse Proceedings. There are no Adverse Proceedings that (a) purport to affect or pertain to this Agreement or any other Preferred Document, or any of the transactions contemplated hereby or (b) could reasonably be expected to have a Material Adverse Effect. Neither the Company Parties nor any of their Subsidiaries is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any Governmental Authority, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 5.05 Use of Proceeds; Regulations U and X. The proceeds of the sale of the Purchased Shares are intended to be and shall be used solely for the purposes set forth in and permitted by Section 6.08. No Company Party is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock, and no proceeds of the sale of the Series G Preferred Stock will be used to purchase or carry margin stock or otherwise for a purpose which violates, or would be inconsistent with Regulation U or Regulation X.

SECTION 5.06 Approvals, Consents, etc. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority, Educational Agency, or other Person, and no consent or approval under any contract or instrument (other than (a) those that have been duly obtained or made and which are in full force and effect, or if not obtained or made, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, (b) the filing of the Charter, and (c) the filing of UCC financing statements and other equivalent filings for foreign jurisdictions) is required for the consummation of the Transactions or the due execution, delivery or performance by any Company Party of any Preferred Document to which it is a party, or for the due execution, delivery or performance of the Transaction Documents, in each case by any of the parties thereto, or is otherwise required to be obtained or made following the consummation of the Transactions or the due execution, delivery or performance of the Transaction Documents. For purposes of this representation and the avoidance of doubt, failure to obtain any material required Educational Approval or to make any material required notice to an Educational Agency regarding the Transactions shall constitute a Material Adverse Effect. There does not exist any judgment, order, injunction or other restraint issued or filed with respect to the transactions contemplated by the Transaction Documents, the consummation of the Transactions, the sale of the Series G Preferred Stock or the performance by the Company Parties or any of their respective Subsidiaries of their obligations under the Preferred Documents.

SECTION 5.07 Investment Company Act. No Company Party is, or will be after giving effect to the Transactions and the transactions contemplated under the Preferred Documents, an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940.

SECTION 5.08 Accuracy of Information. None of the factual information and data (taken as a whole) at any time furnished by any Company Party, any of their respective Subsidiaries or any of their respective authorized representatives in writing to any Investor (including all information contained in the Preferred Documents) for purposes of or in

connection with this Agreement or any of the Transactions contains any untrue statement of a material fact or omits to state any material fact necessary to make such information and data (taken as a whole) not materially misleading, in each case, at the time such information was provided in light of the circumstances under which such information or data was furnished

SECTION 5.09 Financial Condition; Financial Statements. The Historical Financial Statements present fairly in all material respects the financial position and results of operations of the Company and its Subsidiaries at the respective dates of such information and for the respective periods covered thereby, subject in the case of unaudited financial information, to changes resulting from normal year end audit adjustments and to the absence of footnotes. The Historical Financial Statements and all of the balance sheets, all statements of income and of cash flow and all other financial information furnished pursuant to Section 6.01 have been and will for all periods following the Closing Date be prepared in accordance with GAAP consistently applied. All of the financial information to be furnished pursuant to Section 6.01 will present fairly in all material respects the financial position and results of operations of the Company and its Subsidiaries at the respective dates of such information and for the respective periods covered thereby, subject in the case of unaudited financial information, to changes resulting from normal year end audit adjustments and to the absence of footnotes. None of the Company Parties nor any of their respective Subsidiaries has any Indebtedness or other material obligations or liabilities, direct or contingent (other than (i) the liabilities reflected on Schedule 5.23, (ii) obligations arising under the Credit Agreements and the other Credit Documents, (iii) obligations arising under the Preferred Documents, (iv) liabilities reflected in the Historical Financial Statements, and (v) other liabilities incurred in the ordinary course of business) that, either individually or in the aggregate, have had or would reasonably be expected to have, a Material Adverse Effect.

SECTION 5.10 Tax Returns and Payments; Tax Matters. Each Company Party has filed all applicable federal and state income Tax returns and all other material Tax returns, domestic and foreign, required to be filed by them and has paid all income taxes (including, for the avoidance of doubt, the Illinois Personal Property Replacement Income Tax) and all other material Taxes and assessments payable by them that have become due, other than those not yet delinquent or contested in good faith by appropriate proceedings that stay the enforcement of any Lien with respect to which such Company Party has maintained adequate reserves in accordance with GAAP. Each Company Party and its Subsidiaries has paid, or has provided adequate reserves (in the good faith judgment of the management of the Company Parties) in accordance with GAAP for the payment of, all applicable material federal, state and foreign income Taxes applicable for all prior fiscal years and for the current fiscal year. No Tax Lien has been filed, and, to the knowledge of any Company Party, no material claim is being asserted, with respect to any such Tax, fee, or other charge. The Company and each Company Party utilize the accrual method of accounting for U.S. federal income tax purposes and all applicable state, local and foreign income tax purposes. Each direct Subsidiary of the Company is an entity that is taxable as a corporation for U.S. federal income tax purposes and for all applicable state, local and foreign income tax purposes or is an entity disregarded for U.S. federal income tax purposes or is an entity disregarded for U.S. federal income tax purposes.

SECTION 5.11 Compliance with ERISA. (a) Except as would not constitute a Material Adverse Effect, each Plan is in compliance with ERISA, the Code and any Applicable Law; (b)

no Reportable Event has occurred (or is reasonably likely to occur) with respect to any Single Employer Plan; (c) each Single Employer Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service for all required amendments regarding its qualification thereunder that considers the law changes incorporated in the plan sponsor's most recently expired remedial amendment cycle determined under the provisions of Rev. Proc. 2007-44, and nothing has occurred subsequent to the issuance of such determination letter which would prevent, or cause the loss of, such qualification; (d) no Plan is insolvent or in reorganization or in endangered or critical status within the meaning of Section 432 of the Code or Section 4241 or 4245 of Title IV of ERISA (or is reasonably likely to be insolvent or in reorganization), and no written notice of any such insolvency or reorganization has been given to any of the Company Parties, any of their respective Subsidiaries or to the best knowledge of any Company Party, any ERISA Affiliate; (e) no Single Employer Plan is, or is reasonably expected to be, in "at risk" status (as defined in Section 430 of the Code or Section 303 of ERISA); (f) no Single Employer Plan has failed to satisfy the minimum funding standard of Section 412 of the Code or Section 302 of ERISA (whether or not waived in accordance with Section 412(c) of the Code or Section 302(c) of ERISA), or is reasonably likely to do so; (g) no failure to make any required installment under Section 430(j) of the Code with respect to any Single Employer Plan or to make any required contribution to a Multiemployer Plan when due has occurred; (h) none of the Company Parties, any of their respective Subsidiaries or, solely with respect to Title IV of ERISA, any ERISA Affiliate, has incurred (or is reasonably expected to incur) any liability to or on account of a Plan pursuant to Section 409, 502(i), 502(l), 4062, 4063, 4064, 4069, 4201 or 4204 of ERISA or Section 4971 or 4975 of the Code or has been notified in writing that it will incur any liability under any of the foregoing Sections with respect to any Plan; (i) no proceedings have been instituted (or are reasonably likely to be instituted) to terminate or to reorganize any Plan or to appoint a trustee to administer any Plan, and no written notice of any such proceedings has been given to any of the Company Parties, any of their respective Subsidiaries or any ERISA Affiliate; and (j) no Lien imposed under Section 430(k) of the Code or ERISA on the assets of any of the Company Parties, any of their respective Subsidiaries or any ERISA Affiliate exists (or is reasonably likely to exist) nor have the Company Parties, any of their respective Subsidiaries or any ERISA Affiliate been notified in writing that such a Lien will be imposed on the assets of any of the Company Parties, any of their respective Subsidiaries or any ERISA Affiliate on account of any Plan. No Single Employer Plan has an Unfunded Current Liability that would, individually or when taken together with any other liabilities referenced in this Section 5.11, be reasonably likely to have a Material Adverse Effect. No "employee welfare benefit plan" (within the meaning of §3(1) of ERISA or described in §3(2)(B) of ERISA) of any Company Party or any of their respective Subsidiaries, provides benefit coverage subsequent to termination of employment except as required by Title I, Part 6 of ERISA, Section 4980B of the Code or applicable state laws. No liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Section 4203 and 4205 of ERISA, respectively, has been, or is reasonably expected to be, incurred. With respect to any Plan that is a Multiemployer Plan, the representations and warranties in this Section 5.11, other than any made with respect to (i) liability under Section 4201 or 4204 of ERISA or (ii) liability for termination or reorganization of such Plans under ERISA, are made to the best knowledge of the Company Parties.

SECTION 5.12 Subsidiaries. None of the Company Parties has any Subsidiaries other than the Subsidiaries listed on Schedule 5.12, as may be updated from time to time by the

Company Parties. Schedule 5.12, as such Schedule may be updated from time to time, describes the direct and indirect ownership interest of each of the Company Parties in each Subsidiary.

SECTION 5.13 Properties.

(a) Title. Each of the Company Parties and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good title to (in the case of all other personal property), all of their respective properties and assets reflected in their financial statements and other information referred to in Section 5.09 and in the most recent financial statements delivered pursuant to Section 6.01, in each case except for assets disposed of since the date of such financial statements as permitted under Section 7.09. All such properties and assets are free and clear of Liens other than Permitted Liens.

(b) Intellectual Property. Each Company Party and its Subsidiaries owns or is validly licensed to use all Intellectual Property that is necessary for the present conduct of its business, free and clear of Liens (other than Permitted Liens), without conflict with the rights of any other Person unless the failure to own or benefit from such valid license could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the knowledge of each Company Party, no Company Party nor any of its Subsidiaries is infringing, misappropriating, diluting, or otherwise violating the Intellectual Property rights of any other Person unless such infringement, misappropriation, dilution or violation could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 5.14 Environmental Warranties. No Company Party nor any of its Subsidiaries nor any of their respective current Facilities (solely during and with respect to such Person's ownership thereof) or operations, and to their knowledge, no former Facilities (solely during and with respect to any Company Party's or its Subsidiary's ownership thereof), are subject to any outstanding order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; (b) no Company Party nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9604) or any comparable state law; (c) there are and, to each Company Party's and its Subsidiaries' knowledge, have been, no Hazardous Materials Activities which could reasonably be expected to form the basis of an Environmental Claim against such Company Party or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; (d) no Company Party nor any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility (solely during and with respect to such Company Party's or its Subsidiary's ownership thereof), and none of their respective operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any equivalent state rule defining hazardous waste. Compliance with all current requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.15 No Default. None of the Company Parties or any of their respective Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations (other than Contractual Obligations relating to Indebtedness), except in each case where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.16 Solvency. On the Closing Date after giving effect to the Transactions and the other transactions related thereto, the Company and its Subsidiaries, on a consolidated basis, are Solvent.

SECTION 5.17 Compliance with Laws; Authorizations. Each Company Party and each of its Subsidiaries (a) is in compliance with all Applicable Laws and (b) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted except, in each case, to the extent that failure to do so would not, in the aggregate, reasonably be expected to have a Material Adverse Effect. No Company Party has received any notice to the effect that its operations are not in material compliance with any Environmental Law or that it is the subject of any investigation by any Governmental Authority evaluating whether any remedial action is needed to respond to a Release.

SECTION 5.18 No Material Adverse Effect. Since December 31, 2014, there has been no Material Adverse Effect, and there has been no circumstance, event or occurrence, and no fact is known to the Company Parties that would reasonably be expected to result in a Material Adverse Effect.

SECTION 5.19 Contractual or Other Restrictions. Other than the Transaction Documents, as set forth in Schedule 5.19, no Company Party or any of its Subsidiaries is a party to any agreement or arrangement or subject to any Applicable Law that limits its ability to pay dividends to, or otherwise make Investments in or other payments to any Company Party or that otherwise limits its ability to perform the terms of the Preferred Documents.

SECTION 5.20 Transaction Documents. No default or event of default has occurred and is continuing under any Transaction Document. Each Transaction Document is in full force and effect, enforceable against each of the parties thereto (except as may be limited by bankruptcy, insolvency, moratorium, fraudulent conveyance or other laws applicable to creditors' rights generally and by generally applicable equitable principles, whether considered in an action at law or in equity), no Transaction Document has been amended or modified except as disclosed to Investors on or prior to the Closing Date, and no waiver or consent has been granted under any such document.

SECTION 5.21 Collective Bargaining Agreements. Set forth on Schedule 5.21, as such Schedule may be updated from time to time by the Company Parties, is a list and description (including dates of termination) of all collective bargaining or similar agreements between or applicable to any Company Party or any of its Subsidiaries and any union, labor organization or other bargaining agent in respect of the employees of any Company Party or any of its Subsidiaries.

SECTION 5.22 Insurance. The properties of each Company Party are insured with, to the Company's knowledge, financially sound and reputable insurance companies not Affiliates of any Company Party against loss and damage in such amounts, with such deductibles and covering such risks as are customarily carried by Persons of comparable size and of established reputation engaged in the same or similar businesses and owning similar properties in the general locations where such Company Party operates, in each case as described on Schedule 5.22. All premiums with respect thereto that are due and payable have been duly paid (other than those premiums being contested in good faith and by proper proceedings as to which the applicable Company Party has maintained adequate reserves with respect thereto in accordance with GAAP) and no Company Party has received or is aware of any notice of violation or cancellation thereof and each Company Party has complied in all material respects with the requirements of such policy.

SECTION 5.23 Evidence of Other Indebtedness. Schedule 5.23 is a complete and correct list of each credit agreement, loan agreement, indenture, purchase agreement, guarantee, letter of credit or other arrangement providing for or otherwise relating to any Indebtedness or any extension of credit (or commitment for any extension of credit) to, any Company Party outstanding on the Closing Date which will remain outstanding after the Closing Date (other than the Credit Agreements and the other Transaction Documents), in each case, in excess of $300,000 and the aggregate principal or face amount outstanding or that may become outstanding under each such arrangement as of the Closing Date is correctly described in Schedule 5.23.

SECTION 5.24 Deposit Accounts and Securities Accounts. Set forth in Schedule 5.24, as the same is updated from time to time by the Company Parties, is a list of all of the deposit accounts and securities accounts of each Company Party, including, with respect to each bank or securities intermediary at which such accounts are maintained by such Company Party (a) the name and location of such Person and (b) the account numbers of the deposit accounts or securities accounts maintained with such Person.

SECTION 5.25 Absence of any Undisclosed Liabilities. There are no material liabilities of any Company Party of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances which would reasonably be expected to result in any such liabilities, other than such liabilities as were accrued for or disclosed in the Historical Financial Statements, liabilities incurred as part of the Transactions and other liabilities as would not be required to be set forth in a consolidated balance sheet of the Company and its Subsidiaries prepared in accordance with GAAP.

SECTION 5.26 Governmental Authority and Licensing; Educational Agency Approvals; Compliance with Educational Laws.

(a) Other than Kaplan Schools, except as set forth on Schedule 5.26, the Company, its Subsidiaries and each School have since the Compliance Date received the licenses, permits, and approvals of all federal, state, and local governmental authorities necessary to conduct their businesses, including without limitation, all material Educational Approvals, necessary for each School to conduct its operations and offer its

educational programs except where the failure to obtain or maintain the same would not reasonably be expected to have a Material Adverse Effect. Without limiting the foregoing and except as set forth on Schedule 5.26, since the Compliance Date, each School, as applicable: (i) has qualified under all necessary laws and regulations and has been certified to participate in Title IV Programs and has been approved by the DOE for that purpose; (ii) has been accredited by the applicable Accrediting Bodies set forth on Schedule 5.26, and no such Accreditation has been denied, suspended or revoked; and (iii) has been licensed to the full extent required for its existing operations by any applicable Educational Agency or under any applicable Educational Law. Except as set forth on Schedule 5.26, no proceeding, and to the knowledge of any of the Company, its Subsidiaries and each School, no investigation, which could reasonably be expected to result in a Significant Regulatory Event or in a finding or disallowance based upon Title IV ineligibility of any institution, campus, or program owned or operated by the Company or its Subsidiaries is pending or, to the knowledge of the Company, its Subsidiaries or each School, threatened, and to their knowledge no ground exists that could reasonably be expected to result in a Significant Regulatory Event or in any such investigation or proceeding. Except as set forth on Schedule 5.26, the Company, its Subsidiaries and each School has complied with all Consumer Protection Laws applicable to such party, except where the failure to so comply could not reasonably be expected to result in a Significant Regulatory Event. Except as set forth on Schedule 5.26, to the knowledge of the Company Parties, their Subsidiaries, and each School, there is no ground for any Educational Agency to deny or materially delay in issuing any Educational Approval. For purposes of Schedule 5.26, knowledge of the Company, its Subsidiaries and each School shall mean the actual knowledge of all senior management of the Company and its Subsidiaries, each Campus President, Dean of each School, and any individuals with control over the operations pertaining to admissions, recruiting or financial aid, including at each School.

(b) Other than for Kaplan Schools, except as set forth on Schedule 5.26, each of the Company, its Subsidiaries or any School, as applicable, has since the Compliance Date been in material compliance with all applicable Educational Laws. Without limiting the foregoing, except as set forth on Schedule 5.26, since the Compliance Date: (i) each School has qualified as an "eligible institution", as defined in 34 C.F.R. § 600.2 (and the other applicable sections incorporated therein by reference); (ii) each School has qualified as a "proprietary institution of higher education" as defined at 34 C.F.R. § 600.5 and is in compliance with the "state authorization" requirements set forth at 34 C.F.R. § 600.9 that are validly in effect; (iii) each School has derived no more than 90 percent of its revenues from Title IV Program funds for any two consecutive fiscal years as required by and calculated under 34 C.F.R. § 668.14. or 34 C.F.R. § 668.28, as applicable, and such calculation, as reported to the DOE, is complete and accurate in all material respects; (iv) each School has been in compliance with the applicable limitations set forth in 34 C.F.R. § 600.7; (v) each School has timely reported any shifts in ownership or control, or the addition of new educational programs or locations, in compliance in all material respects with 34 C.F.R. Part 600; (vi) none of the Schools has closed, ceased operating, ceased offering instruction during any time period, or otherwise lost eligibility as defined in 34 C.F.R. § 600.40, except for the Schools that have conducted an orderly teachout process and closeout audit, as applicable, of the Title IV program administration

at such School, or campus or location thereof, provided that such closure and teachout was not a result of an order or other mandate of the DOE or any other Educational Agency or Governmental Authority, or as a result of the imposition of any finding or liability or disallowance imposed by the DOE or any other Educational Agency, or following the initiation of any investigation, inquiry, program review or other type of compliance review or audit (including any audit by the Office of Inspector General) by the DOE, any Accrediting Body, or any other Educational Agency; (vii) each School and each of its educational programs in which students are enrolled who receive Title IV Program funds has been operated in all material respects in compliance with the academic year definition in 34 C.F.R. § 668.2 and the eligible program regulations in 34 C.F.R. § 668.8 and the credit hour definition in 34 C.F.R. § 600.2; (viii) each School has complied in all material respects with the terms of its Program Participation Agreement and the requirements of 34 C.F.R. § 668.14, including without limitation the prohibition on the payment of commissions, bonuses, or other incentive payments in 34 C.F.R. § 668.14(b)(22); (ix) each School has complied in all material respects with the standards of administrative capability set forth 34 C.F.R. § 668.16; (x) each School has complied in all material respects with the return of funds regulations in 34 C.F.R. § 668.22 and 34 C.F.R. § 682.605, as applicable; (xi) each School has in all material respects timely submitted to the DOE the annual compliance audit required by 34 C.F.R. §668.23(b) and in accordance with instructions issued by the DOE; (xii) each School has in all material respects timely submitted to the DOE the audited financial statements required by 34 C.F.R. § 668.23(d); (xiii) each School has complied in all material respects with the third-party servicer regulations in 34 C.F.R. § 668.25; (xiv) none of the Schools has been placed by the DOE on a method of Title IV Program funding other than the advance payment method or heightened cash monitoring Level I; (xv) each School has complied with the applicable factors of financial responsibility set forth in 34 C.F.R. §§ 668.15 and 668.171-175, including all reporting requirements for institutions that are in the "zone alternative" or with respect to the posting of a letter of credit pursuant to 34 C.F.R. § 668.175; (xvi) each School has complied with the Cohort Default Rate regulations set forth in 34 C.F.R. Part 668, Subparts M and N; (xvii) each School has complied in all material respects with the DOE regulations regarding the calculation and effect of default rates under the Federal Perkins Loan Program; (xviii) each School has complied in all material respects with the DOE regulations and standards governing the determination of student eligibility for Title IV Program funding and the awarding and disbursing of such funding to its students; (xix) each School has complied in all material respects with the requirements governing preferred lenders set forth in Title I, Part E of the HEA, and 34 C.F.R. §682.212(h); (xx) each School has complied in all material respects with the requirements governing Private Educational Loans set forth in Title I, Part E of the HEA and 15 U.S.C. §1631 et seq.; (xxi) each School has complied in all material respects with the Educational Laws prohibiting any School, employee, agent or official thereof from accepting any gift, payment, inducement, benefit, staffing assistance, advisory board position, or other thing of value in exchange for directing Educational Loan or Private Educational Loan applications to any lender; (xxii) each School has complied in all material respects with the Gainful Employment Rule, the Gainful Employment Certification Requirements, the Gainful Employment Disclosure Requirements, and the Gainful Employment Reporting Requirements, as in effect and as applicable, for the

relevant periods; (xxiii) each School has complied in all material respects with the Program Integrity Rules as applicable for the relevant periods under such regulations; and (xxiv) all reports required to be submitted to any Educational Agency with respect to graduation and placement rates, are in all material respects in material compliance with, as applicable, Educational Laws or industry standards in effect as of the date such reports were submitted.

(c) Except as disclosed on Schedule 5.26, since the Compliance Date, each Kaplan School has been in material compliance with all applicable Consumer Protection Laws and Educational Laws, held all necessary approvals from material Educational Agencies, and qualified as a "proprietary institution of higher education" as defined in 34 C.F.R. § 600.5. Except as set forth on Schedule 5.26, to the knowledge of the Company, its Subsidiaries, and each School, there is no ground for any Educational Agency to deny or materially delay in issuing any Educational Approval or other form of consent that any Company Party, any Subsidiary of a Company Party or any School, as applicable, has sought or will seek in connection with the consummation of the Kaplan Acquisition). Furthermore, pursuant to the Kaplan Acquisition, the Asset Sellers (as defined in the Kaplan Purchase Agreement) of each Kaplan School have agreed to jointly and severally indemnify, defend and hold harmless the Company Parties for any liabilities for any fine, penalty, request for repayment, judgment or claim associated with any administrative, regulatory or judicial action, suit, demand, claim, notice of noncompliance or violation, or proceeding related to compliance with any Educational Liability (as defined in the Kaplan Purchase Agreement) and arising out of the operation of any Kaplan School prior to the Kaplan Acquisition. Under the Global Cap (as defined in the Kaplan Purchase Agreement) applicable to such indemnification, the Asset Sellers have agreed to indemnify the Company Parties without a cap until the third (3rd) anniversary of the date of the Kaplan Purchase Agreement. Beginning on the date that is the third (3rd) anniversary of the date of the Kaplan Purchase Agreement, through the date that is the sixth (6th) anniversary of the date of the Kaplan Purchase Agreement the Sellers (as such term is defined therein) have agreed to indemnify the Company Parties subject to a $100,000,000 cap.

SECTION 5.27 Capitalization. The Capital Stock of the Company is set forth on Schedule 5.27. After giving effect to the issuance and delivery of the Series G Preferred Stock, all of the outstanding Capital Stock of the Company will be owned as set forth in Schedule 5.27 hereto. Except as set forth on Schedule 5.27 hereto, there are no outstanding rights (either preemptive or other) or options to subscribe for or purchase from the Company, and no warrants or other agreements providing for or requiring the issuance by the Company of any of its Capital Stock or any securities convertible into or exchangeable for its Capital Stock.

SECTION 5.28 Brokers. Except as set forth on Schedule 5.28 hereto, no agent, broker, finder or investment or commercial banker, or other Person engaged by or acting on behalf of any Company Party in connection with the negotiation, execution or performance of this Agreement is or will be entitled to any brokerage or finder's or similar fee or other commission as a result of this Agreement.

SECTION 5.29 Kaplan Acquisition. The Kaplan Acquisition shall, concurrently with the effectiveness hereof and initial funding hereunder, be consummated in compliance in all material respects with all material terms of the Kaplan Purchase Agreement and each other Kaplan Purchase Document and in accordance in all material respects with all provisions of applicable law, including all Educational Laws and requirements of any Educational Agency.

SECTION 5.30 The Company. The Company is a holding company with no material assets, business, operations or liabilities, except for its obligations under the Transaction Documents to which it is a party and except that (i) the Company holds 100% of the equity interests of each of Education Corporation of Alabama, an Alabama corporation, Virginia College, LLC, an Alabama limited liability company, and New England College of Business and Finance, LLC, which have been pledged to the Administrative Agent under the Credit Documents to secure the Obligations; (ii) the Company may, from time to time, make non-cash advances to employees, officers and/or directors of the Company Parties and their Subsidiaries, the proceeds of which are used to purchase equity securities of the Company; and (iii) the Company may have employees, engage professionals, incur tax liability and overhead expenses and enter into equity incentive plans with employees, in each case so long as the foregoing relates to the business of Education Corporation of Alabama, New England College of Business and Finance, LLC and their Subsidiaries.

SECTION 5.31 Disclosure. Except as would not reasonably be expected to result in a Material Adverse Effect, all material facts relating to the Business, the Company or any Subsidiary thereof, or their respective assets, condition (financial or otherwise), operations, prospects, employees or customer relations, or the ability of the Sellers to consummate the transactions contemplated hereby, have been disclosed to Investors in this Agreement or the other Transaction Documents.[1] None of the representations and warranties of the Company set forth in this Agreement, in any of the certificates, schedules, lists, documents, exhibits or other instruments delivered, or to be delivered, to the Investors as contemplated by any provision hereof (including, without limitation, the Transaction Documents), contains any untrue statement of material fact or omits to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

ARTICLE VI
Affirmative Covenants

The Company Parties hereby covenant and agree that on the Closing Date and thereafter, so long as any shares of Series G Preferred Stock are outstanding:

SECTION 6.01 Financial Information, Reports, Notices and Information. The Company Parties will furnish each Holder copies of the following financial statements, reports, notices and information:

(a) Financial Statements for the Company Parties and their Subsidiaries. Within (i) forty-five (45) days after the end of each Fiscal Quarter of each Fiscal Year, the consolidated and consolidating balance sheets of the Company Parties and their Subsidiaries as at the end of such

[1] Change is consistent with last sentence of 6.20 of Credit Agreement.

Fiscal Quarter and the related consolidated statements of income, stockholders' equity, and cash flows of the Company Parties and their Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail and consistent in all material respects with the manner of presentation as of the Closing Date, together with a Financial Officer Certification with respect thereto and (ii) thirty (30) days after the end of each fiscal month of each Fiscal Year, the consolidated and consolidating balance sheets of the Company Parties and their Subsidiaries as at the end of such fiscal month and the related consolidated statements of income, stockholders' equity, and cash flows of the Company Parties and their Subsidiaries for such fiscal month and for the period from the beginning of the then current Fiscal Year to the end of such fiscal month, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail and consistent in all material respects with the manner of presentation as of the Closing Date, together with a Financial Officer Certification with respect thereto;

(b) Audited Annual Financial Statements for the Company Parties and their Subsidiaries. Within one hundred twenty (120) days after the end of each Fiscal Year of the Company, (i) the consolidated balance sheets of the Company Parties and their Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of the Company Parties and their Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail and consistent in all material respects with the manner of presentation as of the Closing Date, together with a Financial Officer Certification with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of McGladrey LLP or other independent certified public accountants of recognized national standing selected by the Company Parties, which report shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Company Parties and their Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards);

(c) Compliance Certificate. Concurrently with each delivery of the financial information pursuant to clauses (b) and (c) above, a duly completed Compliance Certificate, executed by an Authorized Officer of the Company, (i) stating that no Default or Event of Default has occurred and is continuing (or, if a Default or Event of Default has occurred, specifying the details of such Default or Event of Default and the actions taken or to be taken with respect thereto) and containing the applicable certifications set forth in Section 5.09 with respect thereto, and (ii) specifying any change in the identity of the Subsidiaries as at the end of such fiscal year or period, as the case may be, from the Subsidiaries provided to the Holders on the Closing Date or the most recent fiscal year or period, as the case may be. Such Compliance Certificate shall also set forth (i) each School's ratio under the "90/10 Rule" calculated in accordance with the requirements set forth at 34 C.F.R. §§ 668.14 and 668.28 for the most recently completed fiscal year; (ii) the value of institutional loans (if any); (iii) the methodology

for determining the value of such institutional loans; (iv) on a consolidated basis for Company and its Subsidiaries the composite score and each ratio comprising the composite score for each School or relevant Company Party, as applicable, as such financial ratios are set forth in 34 C.F.R. Part 668 Subpart L for the most recently completed fiscal year; (v) each School's Cohort Default Rate (as issued in draft form or published in final form, as the case may be) with respect to the most recent year for which such rates are available, and (vi) specifying any change in the identity of the Subsidiaries as at the end of such fiscal year or period, as the case may be, from the Subsidiaries provided to the Holders on the Closing Date or the most recent fiscal year or period, as the case may be.

(d) Annual Budget. (i) Within thirty (30) days following the end of each Fiscal Year of the Company, forecasts prepared by management of the Company Parties, in form reasonably satisfactory to the Required Holders of consolidated balance sheets and statements of income or operations and cash flows of the Company Parties and their Subsidiaries on a quarterly basis for the immediately following Fiscal Year (including the Fiscal Year(s) in which the Termination Date occurs) and (ii) within 30 days after the end of each Fiscal Year of the Company, a copy of the Company's consolidated and consolidating (by campus) projected revenues and Consolidated EBITDA, each on a quarter-by-quarter basis (collectively, the "**Budget**").

(e) Notice of Default and Material Adverse Effect. Promptly upon any Authorized Officer of any Company Party obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that written notice has been given to any Company Party with respect thereto; (ii) that any Person has given any written notice to any Company Party or any of its Subsidiaries or taken any other action with respect to any event or condition set forth in Section 8.01(b), or (iii) the occurrence of any Material Adverse Effect, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, event or condition or change, and what action the Company Parties have taken, are taking and propose to take with respect thereto;

(f) ERISA. (i) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action the any Company Party, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) (1) promptly upon reasonable request of the Holders, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by any Company Party, any of its Subsidiaries or any of their respective ERISA Affiliates with respect to each Pension Plan; and (2) promptly after their receipt, copies of all notices received by any Company Party, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event;

(g) Educational Agency Approvals and Report.

(i) Within ten (10) Business Days of submission to the DOE, a copy of any change of ownership application documents submitted to the DOE in connection with the Kaplan Acquisition to the extent not already provided to the Required Holders hereunder;

(ii) within ten (10) Business Days of receipt from the DOE by any of the Company Parties, draft and final Gainful Employment Rates as applied to any program offered by any School and provided by the DOE pursuant to 34 C.F.R. § 66.404;

(iii) within ten (10) Business Days of receipt, any action, letter, notice or other communication from the DOE, whether written or oral, by any of the Company Parties that indicates or finally determines that any program of a School is no longer an eligible program due to the program's failure to meet the requirements of 34 C.F.R. § 668.403(c), including any such letter, notice or other communication regarding such matters that is provided to any School prior to a final determination to the DOE;

(iv) within ten (10) Business Days of any of the Company Parties becoming aware (whether through draft or official notice by the DOE) that any program does not meet the Gainful Employment Minimum Standards in a federal fiscal year, the Company will provide the Holders with a plan describing how such it intends to avoid having such program fail such Gainful Employment Rate in future federal fiscal years, and how it plans to maintain Title IV eligibility for such program;

(v) within ten (10) Business Days of submission to any Accrediting Body or Educational Agency, a copy of each School's annual financial report submitted to such Accrediting Body or Educational Agency;

(vi) within ten (10) Business Days after submission to DOE, a copy of all documents required to be submitted to the DOE under the Gainful Employment Certification Requirements, Gainful Employment Disclosure Requirements, and Gainful Employment Reporting Requirements;

(vii) to the extent not already provided to the Required Holders hereunder, promptly, and in any event within ten (10) Business Days of submission thereof to the DOE, copies of the annual compliance audit and audited financial statements for each of the Company Parties submitted to the DOE pursuant to 34 C.F.R. § 668.23, and any other financial statements and documents submitted to the DOE under 34 C.F.R. Part 668, Subpart L (34 C.F.R. §§ 668.171-175);

(viii) within five (5) Business Days after knowledge thereof shall have come to the attention of any responsible officer of any Company Party or any of its Subsidiaries, written notice of (i) any pending or threatened loss provided in writing of any Accreditation or Educational Approval of the Company Parties, their Subsidiaries, or any School (including any action placing a School on probation or requiring the School to show cause why its Accreditation or other Educational Approval should not be revoked) or any loss of any educational program approval or Title IV Program eligibility; (ii) any material change in any of the information provided in the eligibility application, to the extent required by 34 C.F.R. § 600.21, of any of the Company Parties or any of its Subsidiaries or any School; (iii) any pending or threatened investigation, program review or other type of compliance review, audit (including an audit by the Office of Inspector General) or other proceeding against any of the Company Parties, any of its Subsidiaries or any School, by the DOE, any Accrediting Body or any other Educational Agency

(excluding routine reviews associated with any renewal of an Educational Approval, inquiries regarding student complaints, or routine correspondence, inquiries, or communications between any School and any Educational Agency), or any complaint, civil investigative demand, investigation or examination from any Consumer Protection Agency; (iv) the request by the DOE that any of the Company Parties, any of its Subsidiaries or any School post or procure or obtain the issuance of the DOE Letter of Credit (as defined in the First Lien Credit Agreement) in order to maintain continued eligibility of any such entity to participate in Title IV Programs, including any letter of credit due to late refunds under 34 C.F.R. § 668.173; (v) a copy of any audit report or review report, including preliminary review reports, issued by any federal or state regulatory agency, including the DOE or any Educational Agency, or of any notice of noncompliance with any applicable Educational Law relating to any of the Company Parties, any of its Subsidiaries or any School; (vi) any change to occur in state or federal laws, rules or governmental regulations or budgetary allocations or educational loan policies which could reasonably be expected to have a Material Adverse Effect; (vii) any written or oral notice by the DOE of the imposition by DOE of any restrictions on the ability of any of the Company Parties, any of its Subsidiaries or any School to add new locations, to add new educational programs or to modify any existing educational programs; or (viii) any written notification of any matter by an Educational Agency that if not corrected or resolved could reasonably be expected to cause any of the Company Parties, any of its Subsidiaries or any of the Schools to lose its status as an "eligible institution" as defined in 34 C.F.R. § 600.2 or an eligible "proprietary institution of higher education" as defined in 34 C.F.R. § 600.5 (and the other sections incorporated therein by reference) or its eligibility to participate in Title IV Programs;

(ix) within ten (10) Business Days after knowledge thereof shall have come to the attention of any of the Company Parties, any of its Subsidiaries, or any School, written notice of (i) any threatened or pending litigation, governmental proceeding or investigation against any of the Company Parties, any of its Subsidiaries, or any School; (ii) the assertion of any claim by the DOE for recoupment pursuant to 34 C.F.R. § 685.206(c)(3); or (iii) the assertion of any claims by more than 25 students in a single fiscal year that assert a defense to repayment of any Title IV loans that are explicitly based on the students' rights under 34 C.F.R. § 685.206 and that, in the aggregate, have a value of more than $250,000;

(x) within ten (10) Business Days after obtaining knowledge thereof, whether based on the preparation of any report or other submission to be filed with any Educational Agency or Governmental Authority or information received from any Educational Agency, Governmental Authority or other source, notice of any anticipated or likely failure of any of the covenants identified in Section 6.02(b).

(xi) within ten (10) Business Days of receipt thereof, a copy of any Educational Approval, renewal of an Educational Approval or initial Educational Approval, including but not limited to those Educational Approval which pertains to, or constitutes approval of, the Kaplan Acquisition.

(xii) within ten (10) Business Days of receipt thereof, a copy of each School's Cohort Default Rate (as issued in draft form or published in final form) for the most recent year for which such data is available.

(xiii) within fifteen (15) Business Days of any of the Company Parties, its Subsidiaries or any School becoming aware that it derived more than 90% of its revenues from the Title IV Program 34 C.F.R. §§668.14(b)(16) and 668.28, a plan describing how the School intends to avoid having a second consecutive fiscal year with Title IV Program revenues at the School exceeding 90%.

(xiv) Within fifteen (15) Business Days of the DOE's publication of a School's official Cohort Default Rate that equals or exceeds the threshold for possible loss of Title IV Program eligibility as set forth at 20 U.S.C. 1085(a)(2), the Company will cause each such affected School to provide to the Holders, a cohort default rate management plan describing how such School intends to avoid having three (3) consecutive Cohort Default Rates each equaling or exceeding the threshold for possible loss of Title IV Program eligibility as set forth at 20 U.S.C. 1085(a)(2) as amended by Section 436(a) of the HEA.

(h) Additional Reporting. Concurrently with each delivery of financial statements pursuant to clause (a)(ii), (i) campus-level reporting, which shall include ending student balance, revenue, EBITDA, the number of negative EBITDA campuses and aggregate negative EBITDA associated with those campuses; (ii) enrollment information including beginning student balance, new student enrollments, provisional cancels, withdrawals, graduates and ending student balance by campus; (iii) summary information regarding marketing and advertising, including aggregate costs, per student acquisition costs and conversion rates; and (iv) other business information as the Holders shall reasonably request.

(i) Other Information. (i) Promptly upon their becoming available, copies of all financial statements and proxy statements sent or made available generally by the Company to its security holders acting in such capacity or by any Subsidiary of the Company Parties to its security holders, if any, and (ii) such other information and data with respect to the Company Parties or any of their Subsidiaries as from time to time may be reasonably requested by the Holders.

SECTION 6.02 Maintenance of Business.

(a) Without limiting the generality of the foregoing and notwithstanding any limitation contained therein, each Company Party shall, and shall cause each School to, maintain in full force and effect (i) its status as an "eligible institution," as defined in 34 C.F.R. §§ 600.2 (and the other applicable sections incorporated therein by reference) and 600.5, (ii) its eligibility to participate in all Title IV Programs in which and to the extent that it currently participates, (iii) its Accreditations by any Accrediting Body, but excluding any programmatic Accreditations listed on Schedule 6.02 that the Company intends to terminate within the next six months, and any temporary interruption of any Educational Approval associated with the transactions contemplated by the Kaplan Purchase Agreement, and (iv) the Educational Approvals issued by any Educational Agency to each Subsidiary of the Company and each School, or campus or location thereof, to provide postsecondary education in all jurisdictions where such Subsidiary or

such School and each campus or location thereof, as applicable, is so licensed, and to cause each Company Party and each School to take all steps to timely renew and maintain all Educational Approvals necessary to participate in the Title IV Programs, and use commercially reasonable efforts to timely respond to and resolve findings of non-compliance asserted by any Educational Agency.

(b) Each Company Party will, and will cause each School to, (i) comply with the composite score factors of financial responsibility set forth in 34 C.F.R. Part 668, Subpart L, including where applicable satisfying (x) the "zone alternative" requirements set forth at 34 C.F.R. § 668.175(d) or (y) any requirement to post for a letter of credit pursuant to the "Alternative Standards and Requirements" codified at 34 C.F.R. § 668.175; (ii) maintain all Cohort Default Rates within the standards required under applicable DOE regulations to maintain eligibility to participate in all Title IV Programs, including the requirements set forth 34 C.F.R., Part 668, Subparts M and N; (iii) maintain compliance with the "90/10 Rule" as measured on a single fiscal year basis under 34 C.F.R. §§ 668.14 and 668.28; (iv) maintain material compliance with (w) administrative capabilities requirements under 34 C.F.R. § 668.16, (x) Program Participation Agreement requirements under 34 C.F.R. § 668.14, (y) eligible program requirements under 34 C.F.R. § 668.8, and (z) for the period in which the Gainful Employment Rule is in force, maintain compliance with the Gainful Employment Rule such that the Schools' educational programs representing no more than 29% of the Student Enrollments fail to satisfy the Gainful Employment Minimum Standards in the case of the same programs for two consecutive federal fiscal years, based on a final determination with respect to such programs by the DOE; and (v) maintain compliance with all applicable Educational Laws, including Accreditation standards, regarding a School's completion, placement, withdrawal and retention rates, except where such failure to comply could not reasonably be expected to result in a Significant Regulatory Event.

(c) Neither the Company nor any of its Subsidiaries will conduct any business other than an Eligible Line of Business.

(d) Each School included in the Kaplan Acquisition shall receive a DOE Approval not later than the first anniversary of the Closing Date (except to the extent that Virginia has received a TPPPA and such TPPPA has been automatically extended by the DOE, provided that Virginia and each School of included in the Kaplan Acquisition are complying on a timely basis with the submission requirements of the DOE).

SECTION 6.03 Payment of Taxes and Claims. Each Company Party will pay (a) all federal, state and other material taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before the same become delinquent and before any penalty or fine accrues thereon and (b) all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such tax or claim need be paid if (i) it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, or (ii) the same would not reasonably be expected to have Material Adverse Effect.

SECTION 6.04 Maintenance of Properties. Each Company Party will maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear and casualty or condemnation excepted, all material properties used or useful in the business of any Company Party and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

SECTION 6.05 Insurance. The Company Parties will maintain or cause to be maintained, with financially sound and reputable insurers, property insurance, such public liability insurance, third party property damage insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of each Company Party as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons. Without limiting the generality of the foregoing, each of the Company Parties will maintain or cause to be maintained flood insurance with respect to all owned real property, if any, that is located in a community that participates in the National Flood Insurance Program, in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System.

SECTION 6.06 Inspections. The Company will, and will cause each of its Subsidiaries to, permit representatives, accountants and independent contractors of the Holders (provided that the Holders shall use commercially reasonable efforts to coordinate their visits) to visit and inspect any of its properties, to conduct field audits and financial reviews, to examine its corporate, financial and operating records, make copies thereof or abstracts therefrom (subject to confidentiality restrictions binding and attorney-client privilege), and prepare reports based thereon, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (so long as a representative of the Company is given the opportunity to be present at any such discussions) all at the expense of the Company and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance written notice to the Company; provided, however, that so long as no Event of Default exists, the Company shall not be obligated to pay for more than one (1) such inspection per year and that when an Event of Default exists the Holders (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Company at any time during normal business hours with advance notice.

SECTION 6.07 Compliance with Laws and Material Contracts. Each Company Party will comply, and shall cause each of its respective Subsidiaries to comply with (a) the Patriot Act and OFAC rules and regulations in all material respects, (b) all other Applicable Laws and (c) all Material Contracts, noncompliance with which, with respect to clauses (b) and (c), could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Without limiting the generality of the foregoing and notwithstanding any limitations contained therein, the Company and each of its Subsidiaries shall and shall cause each School to comply with the Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., all regulations promulgated thereunder, and all other consumer credit laws applicable to any Company Party or any School in connection with the advancing of student loans, except for such laws and regulations the violation of which, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

SECTION 6.08 Use of Proceeds. The Company Parties will use the proceeds of the sale of the Series G Preferred Stock (a) for general corporate and working capital purposes, (b) to refinance simultaneously with the closing of this Agreement certain existing Indebtedness of the Company Parties, and/or (c) to pay transaction fees, costs and expenses related to the Transactions, in each case not in contravention of Applicable Laws or of any Credit Document. No portion of the proceeds of the sale of the Series G Preferred Stock shall be used in any manner that violates Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

SECTION 6.09 Environmental Matters.

(a) Environmental Disclosure. Each Company Party will deliver to the Holders with reasonable promptness, such documents and information as from time to time may be reasonably requested by the Holders.

(b) Hazardous Materials Activities, Etc. The Company shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Company Party that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) respond to any Environmental Claim against such Company Party and discharge any obligations it may have to any Person thereunder where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 6.10 Books and Records. Each Company Party will keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities to the extent necessary to prepare the consolidated financial statements of the Company and the Subsidiaries in conformity with GAAP.

SECTION 6.11 Additional Subsidiaries.

Within thirty (30) days after the acquisition or formation of any Subsidiary:

(a) notify the Holders thereof in writing, together with the (i) jurisdiction of formation, (ii) number of shares of each class of Capital Stock outstanding, (iii) number and percentage of outstanding shares of each class owned (directly or indirectly) by any Company Party or any Subsidiary and (iv) number and effect, if exercised, of all outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto; and

(b) if such Subsidiary is a Domestic Subsidiary, cause such Person to become an Other Company Party by executing and delivering to the Holders the Joinder Agreement or such other documents as the Holders shall deem appropriate for such purpose.

SECTION 6.12 Kaplan Purchase Agreement Rights. Upon the occurrence and during the continuation of an Event of Default, at the written request of the Holders, the Company shall exercise in its reasonable business judgment any and all rights and remedies under the Kaplan

Purchase Agreement and all other agreements, instruments, certificates and documents executed and delivered in connection therewith (including, without limitation, rights to indemnification) in accordance with the terms thereof.

SECTION 6.13 Deferred Investment Fee. On the fifth (5^{th}) anniversary of the Closing Date (the "**Fifth Anniversary**"), and each subsequent anniversary of the Closing Date (through and including the ninth (9th) anniversary of the Closing), in the event the Holders and/or Investors, as the case may be, continue to hold any debt or equity securities of the Company, then the Company shall pay to Investors and/or their designee, in cash, without duplication, a deferred fee (a "**Deferred Investment Fee**"). The Deferred Investment Fee shall equal $4,000,000 on the Fifth Anniversary and shall increase annually by $3,000,000 thereafter on each anniversary until the ninth (9th) anniversary of the Closing Date. For the avoidance of doubt, a Deferred Investment Fee shall be due and payable in accordance herewith even if the Monroe Term Loan has been paid off; *provided*, that the Holders and/or Investors, as the case may be, continue to hold any debt or equity securities of the Company. The Deferred Investment Fee shall be earned on a pro rata basis over the course of the applicable year. For example, (i) on the sixth (6^{th}) anniversary of the Closing Date, if the Deferred Investment Fee for such year is due and payable on such date shall be $7,000,000, and (ii) seven years and six months after the Closing Date, the Deferred Investment Fee shall be equal to $12,000,000.

SECTION 6.14 Compliance with Laws, etc.

(a) Without limiting the generality of the foregoing and notwithstanding any limitation contained therein, each Company Party shall, and shall cause each School to, maintain in full force and effect (i) its status as an "eligible institution," as defined in 34 C.F.R. §§ 600.2 (and the other applicable sections incorporated therein by reference) and 600.5, (ii) its eligibility to participate in all Title IV Programs in which and to the extent that it currently participates, (iii) its Accreditations by any Accrediting Body, but excluding any programmatic Accreditations listed on Schedule 6.02 that the Company intends to terminate within the next six (6) months, and any temporary interruption of any Educational Approval associated with the transactions contemplated by the Kaplan Purchase Agreement, and (iv) its licenses to provide postsecondary education in all jurisdictions where it is so licensed.

(b) Each Company Party will, and will cause each School to, (i) comply with the composite score factors of financial responsibility set forth in 34 C.F.R. Part 668, Subpart L, including where applicable satisfying (x) the "zone alternative" requirements set forth at 34 C.F.R. § 668.175(d) or (y) any requirement to post for a letter of credit pursuant to the "Alternative Standards and Requirements" codified at 34 C.F.R. § 668.175; (ii) maintain all Cohort Default Rates within the standards required under applicable DOE regulations to maintain eligibility to participate in all Title IV Programs, including the requirements set forth 34 C.F.R., Part 668, Subparts M and N; (iii) maintain compliance with the "90/10 Rule" as measured on a single fiscal year basis under 34 C.F.R. §§ 668.14 and 668.28; (iv) maintain material compliance with (w) administrative capabilities requirements under 34 C.F.R. § 668.16, (x) Program Participation Agreement requirements under 34 C.F.R. § 668.14, and (y) eligible program requirements under 34 C.F.R. § 668.8, and (z) for the period in which the Gainful Employment Rule is in force, maintain compliance with the Gainful Employment Rule such that the Schools' educational programs representing no more than 29% of the Student Enrollments

fail to satisfy the Gainful Employment Minimum Standards in any given federal fiscal year, based on a final determination with respect to such programs by the DOE; and (v) maintain compliance with all applicable Educational Laws, including Accreditation standards, regarding a School's completion, placement, withdrawal and retention rates, except where such failure to comply could not reasonably be expected to result in a Significant Regulatory Event.

(c) Neither any Company Party nor any of its Subsidiaries will conduct any business other than an Eligible Line of Business.

(d) Each School included in the transactions contemplated by the Kaplan Purchase Agreement shall receive a DOE Approval not later than the first anniversary of the Closing Date (except to the extent that Virginia has received a TPPPA and such TPPPA has been automatically extended by the DOE, provided that Virginia and each School of included in the transactions contemplated by the Kaplan Purchase Agreement are complying on a timely basis with the submission requirements of the DOE).

(e) Each Company Party will comply, and shall cause each of its Subsidiaries with (a) the Patriot Act and OFAC rules and regulations in all material respects, (b) all other Applicable Laws and (c) all Material Contracts, noncompliance with, with respect to clauses (b) and (c), could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Without limiting the generality of the foregoing and notwithstanding any limitations contained therein, each Company Party and each of its Subsidiaries shall and shall cause each School to comply with the Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., all regulations promulgated thereunder, and all other consumer credit laws applicable to any Company Party, any of its Subsidiaries or any School in connection with the advancing of student loans, except for such laws and regulations the violation of which, in the aggregate, would reasonably be expected to have a Material Adverse Effect.

SECTION 6.15 Maintenance of Eligibility. Each Company Party will, and will cause its Subsidiaries and each School to, maintain in effect the Educational Approvals issued by any Educational Agency to each Subsidiary of the Company and each School, or campus or location thereof, to provide postsecondary education in all jurisdictions where such Subsidiary or such School and each campus or location thereof, as applicable, is so licensed. The Company will, and will cause each Company Party and each School to take all steps to timely renew and maintain all Educational Approvals necessary to participate in the Title IV Programs, and use commercially reasonable efforts to timely respond to and resolve findings of non-compliance asserted by any Educational Agency.

SECTION 6.16 Title IV Disbursements. The Company will, and will cause each other Company Party to make prompt disbursements of Title IV Program funds from the Title IV Funds Accounts in material compliance with the time frames required for disbursement of such funds as set forth in 34 C.F.R. §668.161-166.

SECTION 6.17 Series G Preferred Stock Issuance Notifications. The Company will, no later than ten (10) days following closing of the issuance of the Series G Preferred Stock (or by any earlier required date) or such time prescribed by law, make all post-closing filings and notices to Educational Agencies in connection with such issuance, as set forth in Schedule 6.17.

SECTION 6.18 The Company. The Company shall at all times remain as a holding company, with no assets, business, operations or liabilities, except as described in Section 5.30.

ARTICLE VII
Negative Covenants

The Company Parties hereby covenant and agree that on the Closing Date and thereafter, so long as any of the Series G Preferred Stock are outstanding:

SECTION 7.01 Limitation on Indebtedness. No Company Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, other than:

(a) the Obligations;

(b) Indebtedness of a Company Party to any other Company Party;

(c) Guarantees with respect to Indebtedness permitted under this Section 7.01;

(d) Indebtedness existing on the Closing Date and described in Schedule 5.23, together with any Permitted Refinancing thereof;

(e) Indebtedness with respect to (x) Capital Leases and (y) purchase money Indebtedness; provided, in the case of clause (x), that any such Indebtedness shall be secured only by the asset subject to such Capital Lease, and, in the case of clause (y), that any such Indebtedness shall be secured only by the asset acquired in connection with the incurrence of such Indebtedness;

(f) Indebtedness in respect of any Swap Agreement that is entered into in the ordinary course of business to hedge or mitigate risks to which any Company Party or any of its Subsidiaries is exposed in the conduct of its business or the management of its liabilities (it being acknowledged by the Company Parties that a Swap Agreement entered into for speculative purposes or of a speculative nature is not a Swap Agreement entered into in the ordinary course of business to hedge or mitigate risks);

(g) Indebtedness representing deferred compensation to officers, directors, employees of the Company Parties and their Subsidiaries;

(h) Subordinated Debt in an aggregate amount not to exceed at any time $2,000,000;

(i) Indebtedness of the Company Parties in an aggregate amount not to exceed at any time $3,000,000, of which, up to $1,000,000 may be secured;

(j) Indebtedness incurred under the Credit Documents and Refinancings (as defined in the Intercreditor Agreement) thereof;

(k) indebtedness in respect of taxes, assessments or governmental charges to the extent that payment thereof shall not at any time be required to be made in accordance with Section 6.03 thereof;

(l) indebtedness incurred in connection with the financing of insurance premiums;

(m) indebtedness in respect of netting services or overdraft protection;

(n) accrual of interest, accretion or amortization of original issue discount and/or paid-in-kind interest, in each case, in respect of Indebtedness otherwise permitted hereunder;

(o) indebtedness constituting credit support to Cash Collateralize (as defined in the First Lien Credit Agreement) the aggregate undrawn amount of the DOE Letter of Credit (as defined in the First Lien Credit Agreement);

(p) Series G Preferred Stock;

(q) guaranty obligations incurred in connection with guarantees or rental payments under leases of the Company Parties and the Subsidiaries for the benefit of lessors under such leases;

(r) contingent obligations consisting of indemnification obligations to officers and directors under the organizational documents of the Company Parties and the Subsidiaries; and

(s) unsecured indebtedness consisting of deferred purchase price or notes ("**Redemption Notes**") issued by the Company to officers, directors and employees of the Company or any Subsidiary to purchase or redeem Capital Stock (or options or warrants or similar instruments) of the Company in an aggregate amount not to exceed at any time $2,000,000; provided such deferred obligations and notes are subordinated to the Obligations to the Holders' satisfaction.

SECTION 7.02 Limitation on Liens. No Company Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of any the Company Party or any of its Subsidiaries, whether now owned or hereafter acquired, created or licensed or any income, profits or royalties therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income, profits or royalties under the UCC of any State or under any similar recording or notice statute or under any Applicable Laws related to intellectual property, except:

(a) Liens in favor of (x) the Collateral Agent for the benefit of the holders of the Obligations granted pursuant to any Credit Documents and (y) Cadence as Agent under the First Lien Credit Agreement for the benefit of the holders of the obligations

granted pursuant to any First Lien Credit Document in accordance with the Intercreditor Agreement;

(b) Liens for Taxes not yet due or for Taxes if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted;

(c) statutory Liens of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or Section 303(k) or 4068 of ERISA that would constitute an Event of Default under Section 8.01(j)), in each case incurred in the ordinary course of business (i) for amounts not yet overdue, or (ii) for amounts that are overdue and that are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of any the Company Party or any of its Subsidiaries, including, without limitation, all encumbrances shown on any policy of title insurance in favor of the Collateral Agent with respect to any real estate asset;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any cash earnest money deposits made by any Company Party or any of its Subsidiaries in connection with any letter of intent, or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) licenses of patents, trademarks and other intellectual property rights granted by any Company Party or any of its Subsidiaries in the ordinary course of business and not interfering in any respect with the ordinary conduct of the business of such Company Party or such Subsidiary;

(l) Liens existing as of the Closing Date and described in Schedule 7.02;

(m) Liens securing purchase money Indebtedness and Capital Leases to the extent permitted pursuant to Section 7.01(e); provided, any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness or the assets subject to such Capital Lease, respectively;

(n) Liens in favor of the Issuing Bank (as defined in the First Lien Credit Agreement) on cash collateral securing the obligations of a Defaulting Lender (as defined in the First Lien Credit Agreement) to fund risk participations under the First Lien Credit Agreement;

(o) Liens consisting of judgment or judicial attachment liens relating to judgments which do not constitute an Event of Default hereunder;

(p) licenses (including licenses of Intellectual Property), sublicenses, leases or subleases granted to third parties in the ordinary course of business;

(q) Liens in favor of collecting banks under Section 4-210 of the UCC;

(r) Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law encumbering deposits;

(s) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods in the ordinary course of business;

(t) Liens not otherwise permitted hereunder securing Indebtedness or other obligations not in excess of $1,000,000 in the aggregate at any one time outstanding;

(u) Liens on indebtedness constituting credit support to Cash Collateralize (as defined in the First Lien Credit Agreement) the aggregate undrawn amount of the DOE Letter of Credit (as defined in the First Lien Credit Agreement);

(v) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(w) Liens on property of any Company Party or any Subsidiary created in connection with a sale leaseback transaction permitted pursuant to Section 7.11.

SECTION 7.03 No Further Negative Pledges. No Company Party shall, nor shall it permit any of its Subsidiaries to, enter into any Contractual Obligation (other than this Agreement and the Credit Documents) that limits the ability of any Company Party or any such Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided,

however, that this Section 7.03 shall not prohibit (i) any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.01(e), solely to the extent any such negative pledge relates to the property financed by or subject to Permitted Liens securing such Indebtedness, (ii) any Permitted Lien or any document or instrument governing any Permitted Lien; provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (iii) customary restrictions and conditions contained in any agreement relating to the disposition of any property or assets permitted under Section 7.09 pending the consummation of such disposition, (iv) customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business and (v) Liens on indebtedness constituting credit support to Cash Collateralize (as defined in the First Lien Credit Agreement) the aggregate undrawn amount of the DOE Letter of Credit (as defined in the First Lien Credit Agreement).

SECTION 7.04 Restricted Payments, etc. Each Company Party will not, and will not permit any of its Subsidiaries, to make any Restricted Payment, or make any deposit for any Restricted Payment, other than:

(a) each Subsidiary of the Company Parties may make Restricted Payments to the Company Parties;

(b) the Company may declare and make dividend payments or other distributions payable solely in the Capital Stock of such Person;

(c) Restricted Payments to effect or consummate the Transactions;

(c) Permitted Sponsor Management Fees;

(d) the making of dividends or distributions by a Subsidiary of the Company to the Company for the purpose of permitting the Company to make payments in respect of its permitted activities;

(e) at any time when no Event of Default has occurred and is continuing or would be caused thereby, the making of cash repurchases by any Company Party or any Subsidiary of stock from retired, retiring or terminated employees, officers or directors, or of stock held by deceased employees, officers or directors at the time of their death for consideration and cash payments in respect of Redemption Notes to the extent permitted by the subordination terms applicable thereto not to exceed in aggregate for all such payments, $2,000,000 per Fiscal Year of the Company and non-cash repurchases by the Company of stock from retired or terminated employees, officers or directors, or of stock held by deceased employees, officers or directors at the time of their death whereby the Company tenders a note previously issued to the Company by such employee, officer or director for cancellation in exchange for such stock;

(f) reimbursement to Sponsor consisting of interest and fees due and payable on the East West Bank Loan;

(g) the making of dividends or distributions by a Subsidiary of the Company to the Company for the purpose of permitting the Company to make payments in respect the Series G Preferred Stock;

(h) the Company Parties shall be permitted to make an aggregate amount of distributions each year to the Company (and any direct or indirect owner of the Company treated as the common parent of any affiliated, combined or consolidated group including any of the Company Parties) in an amount sufficient to pay any combined, consolidated, unitary or similar taxes imposed on the Company (or such direct or indirect parent) with respect to the assets, operations, or income of the Company Parties and their Subsidiaries; provided that the amount of such distributions shall not be greater than the amount of such taxes that would have been due and payable by the relevant Company Parties and their relevant Subsidiaries had such combined, consolidated, unitary or similar type tax return not been filed; and

(i) the Company may dispose in one transaction or a series of transactions of the Capital Stock it owns of SMI Group Ultimate Holdings, Inc. (i) for cash in an amount not less than $15,000,000 (or pro rata amount thereof) in the aggregate or (ii) otherwise, with the Required Holders' prior written consent.

SECTION 7.05 Burdensome Agreements. No Company Party shall, nor shall it permit any of its Subsidiaries to, enter into, or permit to exist, any Contractual Obligation that encumbers or restricts the ability of any such Person to (i) pay dividends or make any other distributions to the Company Parties on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to any Company Party, (iii) make loans or advances to any Company Party, (iv) sell, lease or transfer any of its property to any Company Party, (v) pledge its property pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof or (vi) act as a borrower pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (i)-(iv) above) for (1) this Agreement and the other Credit Documents and the First Lien Credit Documents, (2) any document or instrument governing Indebtedness incurred pursuant to Section 7.01(e); provided that any such restriction contained therein relates only to the asset or assets constructed or acquired in connection therewith, (3) any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien or (4) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 7.09 pending the consummation of such sale.

SECTION 7.06 Investments. No Company Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any joint venture and any Foreign Subsidiary, except:

(a) Investments in cash and Cash Equivalents and deposit accounts or securities accounts in connection therewith;

(b) equity Investments owned as of the Closing Date in any Subsidiary and investments made from time to time by and among the Company Parties in their Subsidiaries and by a Subsidiary in one or more of its Subsidiaries;

(c) intercompany loans to the extent permitted under Section 7.01(b) and guarantees to the extent permitted under Section 7.01(c);

(d) Investments existing on the Closing Date and described on Schedule 7.06;

(e) Investments constituting accounts receivable, trade debt and deposits for the purchase of goods, in each case made in the ordinary course of business;

(f) cash loans to officers, directors, employees and shareholders not in excess of $250,000 in the aggregate at any time outstanding and non-cash loans made by the Company to officers and employees whereby such officers and employees issue a note to the Company in exchange for Capital Stock of the Company;

(g) transfers of assets by a Company Party to a Subsidiary of such Company Party, or by a Subsidiary of a Company Party to another Subsidiary of such Company Party, in accordance with mergers and consolidations expressly permitted hereunder;

(h) securities acquired in connection with the satisfaction or enforcement of indebtedness or claims due or owing or as security for any such Indebtedness or claim, so long as the same are pledged to the Collateral Agent to secure the Obligations;

(i) loans or investments that could otherwise be made as a distribution permitted under Section 7.04;

(j) loans to landlords in the ordinary course of business in connection with tenant improvements;

(k) other Investments not listed above and not otherwise prohibited by this Agreement in an aggregate amount outstanding at any time (on a cost basis) not to exceed $500,000.

Notwithstanding the foregoing, in no event shall any Company Party make any Investment which results in or facilitates in any manner any Restricted Payment not otherwise permitted under the terms of Section 7.04. In determining the amount of investments, acquisitions, loans, and advances permitted under this Section, investments and acquisitions shall always be taken at the original cost thereof (regardless of any subsequent appreciation or depreciation therein), and loans and advances shall be taken at the principal amount thereof then remaining unpaid.

SECTION 7.07 Financial Covenants. The Company Parties shall:

(a) Total Debt to EBITDA Ratio. Not permit the Total Debt to EBITDA Ratio as of the end of any Fiscal Quarter to exceed the applicable ratio set forth below:

Fiscal Quarter Ending	**Total Debt to EBITDA Ratio**
September 30, 2015	1.50:1.00
December 31, 2015	1.25:1.00
March 31, 2016	1.20:1.00
June 30, 2016	1.20:1.00
September 30, 2016	1.10:1.00
December 31, 2016	1.00:1.00
March 31, 2017	0.95:1.00
June 30, 2017	0.90:1.00
September 30, 2017	0.85:1.00
December 31, 2017	0.80:1.00
March 31, 2018	0.75:1.00
June 30, 2018	0.75:1.00
September 30, 2018	0.75:1.00
December 31, 2018	0.75:1.00

(b) Consolidated Fixed Charge Coverage Ratio. Not permit the Consolidated Fixed Charge Coverage Ratio as of the end of any Fiscal Quarter to be less than the applicable ratio set forth below.

Fiscal Quarter Ending	**Fixed Charge Coverage Ratio**
September 30, 2015	2.00:1.00
December 31, 2015	1.90:1.00
March 31, 2016	1.75:1.00
June 30, 2016	1.30:1.00
September 30, 2016	1.20:1.00
December 31, 2016	1.25:1.00
March 31, 2017	1.20:1.00
June 30, 2017	1.30:1.00
September 30, 2017	1.30:1.00
December 31, 2017	1.30:1.00
March 31, 2018	1.40:1.00
June 30, 2018 and each Fiscal Quarter ending thereafter	1.30:1.00

(c) Consolidated EBITDA. Not permit Consolidated EBITDA as of the end of any Fiscal Quarter to be less than the applicable amount set forth below:

Fiscal Quarter Ending	**EBITDA**
September 30, 2015	$42,443,000
December 31, 2015	$35,519,000
March 31, 2016	$35,437,000
June 30, 2016	$34,301,000
September 30, 2016	$32,255,000
December 31, 2016	$35,046,000
March 31, 2017	$37,807,000
June 30, 2017	$45,000,000
September 30, 2017	$47,000,000
December 31, 2017	$49,000,000
March 31, 2018 and each Fiscal Quarter ending thereafter	$51,000,000

(d) Maximum Negative Consolidated Campus EBITDA Test. Not permit Maximum Negative Consolidated Campus EBITDA Test as of the end of any Fiscal Quarter commencing with the Fiscal Quarter ending September 30, 2015 to be less (i.e., a more negative amount) than negative $12,000,000.

SECTION 7.08 Capital Expenditures. The Company Parties shall not permit Consolidated Capital Expenditures in any Fiscal Year to exceed an aggregate amount in excess of the amounts shown below (the "**CapEx Amount**"):

Fiscal Year	Aggregate Amount
2015	$16,000,000
2016	$18,000,000
2017	$17,500,000
2018	$17,500,000

SECTION 7.09 Fundamental Changes; Disposition of Assets; Acquisitions. No Company Party shall, nor shall it permit any of its Subsidiaries to, enter into any Acquisition or transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or make any Asset Sale, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory and materials and the acquisition of equipment and capital expenditures in the ordinary course of business, subject to Section 7.08) the business, property or fixed assets of, or Capital Stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of the Company Parties may be merged with or into the Company Parties or any Subsidiary, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to the Company Parties or any other Subsidiary; provided, in the case of such a merger, if any Company Party is party to the merger, then a Company Party shall be the continuing or surviving Person;

(b) Asset Sales, (i) the proceeds of which when aggregated with the proceeds of all other Asset Sales made within the same Fiscal Year, do not exceed $1,000,000; provided (1) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of the applicable Company Party (or similar governing body)), and (2) no less than seventy-five percent (75%) of such proceeds shall be paid in cash;

(c) Investments made in accordance with Section 7.06 and Restricted Payments made in accordance with Section 7.04(j);

(d) Dispositions of the types described in clauses (a) through (g) of the definition of Asset Sale;

(e) sale leasebacks permitted pursuant to Section 7.11;

(f) the Company may dispose of the Capital Stock it owns of SMI Group Ultimate Holdings, Inc. (i) if paid in full and for cash in an amount not less than $15,000,000 or (ii) otherwise, with the Required Holders' prior written consent.

SECTION 7.10 Disposal of Subsidiary Interests. Except for any sale of all of its interests in the Capital Stock of any of its Subsidiaries in compliance with the provisions of Section 8.10 and except for Liens securing the Obligations, no Company Party shall, nor shall it permit any of its Subsidiaries to, (a) directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to qualify directors if required by Applicable Laws; or (b) permit any of its Subsidiaries directly or indirectly to sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries, except to another Company Party (subject to the restrictions on such disposition otherwise imposed hereunder), or to qualify directors if required by Applicable Laws.

SECTION 7.11 Sale and Leaseback. Except as otherwise disclosed on Schedule 7.11, no Company Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which the Company Party or any Subsidiary (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Company Parties), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by the Company Parties to any Person (other than the Company Parties) in connection with such lease.

SECTION 7.12 Transactions with Affiliates. No Company Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any

transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any officer, director or Affiliate of the Company Parties or any their Subsidiaries (including, for purposes of clarity Education Technology Partners, LLC) on terms that are less favorable to the Company Parties or such Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not an officer, director or Affiliate of the Company Parties or any of their Subsidiaries; provided, the foregoing restriction shall not apply to (a) any transaction between or among the Company Parties, (b) normal and reasonable indemnification, compensation and reimbursement of expenses of employees, officers and directors in the ordinary course of business, (c) Permitted Sponsor Management Fees, (d) investments by the Sponsor on similar terms as its existing investments in the Company Parties, and (e) transactions that are expressly permitted pursuant to Sections 7.01(s), 7.04(c), (e), (f), (g) or (i), 7.06(f), 7.09(a) and 7.09(f).

SECTION 7.13 Conduct of Business. From and after the Closing Date, no Company Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than the businesses engaged in by such Company Party or such Subsidiary on the Closing Date and businesses that are substantially similar, ancillary, complementary, related or incidental thereto.

SECTION 7.14 Fiscal Year. No Company Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year-end from December 31.

SECTION 7.15 Bankruptcy, Insolvency, etc. Each Company Party will not, and will not permit any of its Subsidiaries to:

(a) become insolvent or generally fail to pay, or admit in writing its inability or unwillingness generally to pay, its debts as they become due;

(b) apply for, consent to, or acquiesce in the appointment of a trustee, receiver, sequestrator or other custodian for any substantial part of the assets or other property of any such Person, or make a general assignment for the benefit of creditors;

(c) in the absence of such application, consent or acquiesce to or permit or suffer to exist, the appointment of a trustee, receiver, sequestrator or other custodian for a substantial part of the property of any thereof, and such trustee, receiver, sequestrator or other custodian shall not be discharged within forty-five (45) days; provided, that each Company Party hereby expressly authorizes each Holder to appear in any court conducting any relevant proceeding during such forty-five (45)-day period to preserve, protect and defend their rights under the Preferred Documents;

(d) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law or any dissolution, winding up or liquidation proceeding, in respect thereof, and, if any such case or proceeding is not commenced by such Person, such case or proceeding shall be consented to or acquiesced in by such Person, or shall result in the entry of an order for relief or shall remain for forty-five (45) days undismissed; provided, that each Company Party hereby expressly authorizes each Holder to appear in any court conducting any such case or proceeding during

such forty-five (45)-day period to preserve, protect and defend their rights under the Preferred Documents; or

(e) take any action authorizing, or in furtherance of, any of the foregoing.

SECTION 7.16 Changes in Business. From and after the Closing Date, no Company Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than the businesses engaged in by such Company Party or such Subsidiary on the Closing Date and businesses that are substantially similar, ancillary, complementary, related or incidental thereto.

SECTION 7.17 Transfers of Capital Stock. The Company shall not authorize the transfer of any Capital Stock held Sponsor and/or its Affiliates in the event that, following such transfer, a Change of Control would be effectuated, unless as part of such Change of Control transaction, each outstanding share of Series G Preferred Stock is redeemed for the Series G Redemption Amount as determined in accordance with the Charter.

SECTION 7.18 Issuance of Capital Stock. The Company will not authorize or issue any Capital Stock (whether for value or otherwise) that ranks senior or *pari passu* (as to rights upon liquidation or dissolution or distributions or otherwise) to the Series G Preferred Stock, or any warrants, options or other rights, or other securities exercisable for or convertible into, any such Capital Stock.

SECTION 7.19 Modification of Certain Agreements. Each Company Party will not, and will not permit any of its Subsidiaries to, consent to any amendment, supplement, waiver or other modification of, or enter into any forbearance from exercising any rights with respect to the terms or provisions contained in (a) any Transaction Documents, Organization Documents or the Stockholders Agreement, in each case, (i) other than any amendment, supplement, waiver or modification or forbearance that results in an immaterial consequence to any Company Party as reasonably determined by the Required Holders and (ii) unless the Holders have received at least five (5) Business Days' prior notice of such amendment, supplement, waiver or other modification and the terms thereof or (b) any document, agreement or instrument evidencing or governing any Indebtedness that has been subordinated to the Obligations in right of payment or any Liens that have been subordinated in priority to the Liens of the Collateral Agent under the Credit Documents unless such amendment, supplement, waiver or other modification is permitted under the terms of the subordination agreement applicable thereto.

SECTION 7.20 Registration Rights. No Company Party shall grant registration rights in respect of any of its Capital Stock to any Person without granting to the Holders equivalent or more favorable registration rights.

ARTICLE VIII
Events of Default

SECTION 8.01 Listing of Events of Default. Each of the following events or occurrences described in this Section 8.01 shall constitute an "**Event of Default**":

(a) Non-Payment of Obligations. The Company shall default in the payment of:

(i) any payment of the Series G Redemption Amount when due; or

(ii) any dividend on the Series G Preferred Stock required under the Charter and such default shall continue unremedied for a period of three (3) Business Days after such amount is due; or

(iii) any other monetary obligation under this Agreement or any of the other Preferred Documents, and such default shall continue unremedied for a period of five (5) Business Days after such amount is due;

provided that notwithstanding the foregoing, it is understood and agreed that no Event of Default shall be deemed to occur with respect to dividends deposited in the dividend reserve account established pursuant to the Dividend Reserve Agreement so long as such dividends are paid from such account; or

(b) Default in Other Agreements. (i) Failure of any Company Party or any of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 7.1(a)) in an aggregate principal amount of $1,000,000 or more (for the avoidance of doubt, including Indebtedness owing under the Credit Agreements), in each case beyond the grace or cure period, if any, provided therefor; or (ii) breach or default by any Company Party with respect to any other term of (1) one or more items of Indebtedness in the aggregate principal amounts referred to in clause (i) above, or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness (for the avoidance of doubt, including the First Lien Credit Agreement), in each case beyond the grace or cure period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. Failure of any Company Party to perform or comply with any term or condition contained in Section 6.01, Section 6.02, Section 6.05, Section 6.06, Section 6.07, Section 6.08, Section 6.09, Section 6.11, Section 6.12, Section 6.13 or Article VII; or

(d) Breach of Representations, etc. Any representation, warranty, certification or other written statement made or deemed made by any Company Party in any Credit Document or in any statement or certificate at any time given by any Company Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Defaults Under Credit Documents. Any Company Party shall default in the performance of or compliance with any term contained in any of the Credit Documents, and such default shall not have been remedied or waived within thirty (30) days after the earlier of (i) an Authorized Officer of such Company Party becoming aware of such default and (ii) receipt by the Company of written notice from the Holders of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of any Company Party or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or Debtor Relief Laws now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against any Company Party or any of its Subsidiaries under the Bankruptcy Code or other Debtor Relief Laws now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any Company Party or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of any Company Party or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of any Company Party or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty (60) days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) Any Company Party or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under the Bankruptcy Code or other Debtor Relief Laws now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or any Company Party or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) any Company Party or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of any Company Party or any of its Subsidiaries or any committee thereof shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.01(f); or

(h) Judgments and Attachments. (i) Any one or more money judgments, writs or warrants of attachment or similar process involving an aggregate amount at any time in excess of $1,000,000 (to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage or not fully covered by an indemnity by a Person (other than a Company Party or Subsidiary) and the Required Holders deem to be creditworthy and where the payment terms of such indemnity are acceptable to the Required Holders in their sole discretion) shall be entered or filed against any Company Party or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days; or (ii) any non-monetary judgment or order shall be rendered against any Company Party or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect, and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty (60) days; or

(i) Dissolution. Any order, judgment or decree shall be entered against any Company Party or any of its Subsidiaries decreeing the dissolution or split up of such Company Party or such Subsidiary and such order shall remain undischarged or unstayed for a period in excess of forty-five (45) days; or

(j) Pension Plans. There shall occur one or more ERISA Events which individually or in the aggregate results in liability of any Company Party, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $2,000,000 during the term hereof and which is not paid by the applicable due date; or

(k) Change of Control. A Change of Control shall occur; or

(l) Invalidity of Credit Documents and Other Documents. At any time after the execution and delivery thereof, (i) this Agreement or any other Credit Document ceases to be in full force and effect (other than by reason of (x) a release of Collateral or Guarantees (as defined therein) in accordance with the terms hereof or thereof, (y) a waiver or release by the Agents or a Lender thereunder, as applicable, or (z) the satisfaction in full of the Obligations (other than contingent and indemnified obligations not then due and owing) in accordance with the terms hereof) or shall be declared null and void, or the Collateral Agent shall not have or shall cease to have a valid and perfected Lien in any Collateral purported to be covered by the Collateral Documents with the priority required by the relevant Collateral Document (as defined in the Credit Agreements), or (ii) any Company Party shall contest the validity or enforceability of this Agreement or any Credit Document in writing or deny in writing that it has any further liability, including with respect to future advances by the Lenders, under any Credit Document to which it is a party; or

(m) Sponsor Backstop Agreement. A "WSP Default" shall occur and be continuing under the Sponsor Backstop Agreement and Monroe (as defined therein) shall have exercised or have the right to exercise remedies thereunder.

(n) Title IV. The DOE shall have, pursuant to Subpart G of 34 C.F.R. Part 668, regarding the eligibility of any Company Party, any of its Subsidiaries or any School to participate in the Title IV Programs, notified any Company Party, any Subsidiaries or such School, as the case may be, of any suspension, termination or limitation of Title IV Program funding for any Company Party, any of its Subsidiaries or any School that, in the sole discretion of the Required Holders, would reasonably be expected to have a Material Adverse Effect, and such suspension, termination or limitation shall not have been withdrawn, appealed in accordance with DOE procedures or otherwise terminated within 10 days of such notification; or otherwise terminated within 10 days of such notification; or

(o) Emergency Action. The DOE shall have notified any Company Party, any of its Subsidiaries or any School that the DOE intends to initiate an emergency action against a School pursuant to 34 C.F.R. § 668.83; or

(p) Education Approvals. Any of the following shall have occurred: (i) the issuance of a notice of intent by an Educational Agency to suspend, terminate, withdraw, limit or not renew an Educational Approval of a School that, in the sole discretion of the Required Holders, would reasonably be expected to have a Material Adverse Effect, and such suspension, termination, withdrawal, limitation or decision not to renew shall not have been withdrawn, appealed in accordance with Educational Agency procedures or terminated within 7 days from such notification; or (ii) any Significant Regulatory Event; or

(q) Material Business. Any Company Party or any of its Subsidiaries shall have been enjoined or restrained by the order of any court or any administrative or regulatory agency from conducting all or a material part of its business affairs and such event would reasonably be expected to have a Material Adverse Effect; or

(r) Significant Event. A Significant Event shall have occurred.

SECTION 8.02 Remedies Upon Event of Default.

(a) If any Event of Default that is a Significant Event shall occur for any reason, whether voluntary or involuntary, and be continuing, then, as provided in the Charter and the Sponsor Irrevocable Proxy, the Holders shall be entitled to (1) an additional six percent (6.0%) increase to the then-current Series G Preferred Stock dividend rate and (2) exercise the Sponsor Irrevocable Proxy and elect such number of members of the board of directors of the Company as would constitute a majority thereof. In connection with clause (2) of the foregoing sentence, (i) the Holders shall be entitled to review the Company's existing directors' and officers' insurance policies and the Company's existing fiduciary liability insurance policies to ensure that any directors elected by the Holders are, in their reasonable judgment, adequately protected, including in the event of any default by the Company in respect of its obligations to the DOE and (ii) upon the Holder's written request pending such review, the Holders may cause the Company to increase the coverage for the benefit of the board of directors of the Company under such insurance policies at the Company's sole cost and expense.

(b) If any Event of Default (other than a Significant Event) shall occur for any reason, whether voluntary or involuntary, and be continuing, then, to the extent provided in the Charter, the Holders shall be entitled to an additional three percent (3.0%) increase to the then-current Series G Preferred Stock dividend rate.

(c) If any Event of Default (whether a Significant Event or otherwise) shall occur for any reason, whether voluntary or involuntary, and be continuing, then the Holders shall be entitled to seek any and all remedies which may be available to them, whether in law or in equity.

ARTICLE IX
Miscellaneous

SECTION 9.01 Amendments and Waivers. Neither this Agreement nor any other Preferred Document, nor any terms hereof or thereof, may be amended, supplemented or modified except in accordance with the provisions of this Section 9.01. The Required Holders may, from time to time, (a) enter into with the relevant Company Party or Company Parties written amendments, supplements or modifications hereto and to the other Preferred Documents for the purpose of adding any provisions to this Agreement or the other Preferred Documents or changing in any manner the rights of the Holders or the Company Parties hereunder or thereunder or (b) waive, on such terms and conditions as the Required Holders may specify in such instrument, any of the requirements of this Agreement or the other Preferred Documents or any Default or Event of Default and its consequences; provided, that no such waiver, amendment, supplement or modification shall directly: (i) amend, modify or waive any provision

of this Section 9.01 or reduce the percentages specified in the definitions of the term "Required Holders" or consent to the assignment or transfer by any Company Party of its rights and obligations under any Preferred Document to which it is a party (except as permitted pursuant to Section 9.03), in each case without the written consent of each Holder directly and adversely affected thereby; or (ii) release any Other Company Party.

SECTION 9.02 Notices and Other Communications; Facsimile Copies.

(a) General. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder or under any other Preferred Document shall be in writing (including by facsimile transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Company Parties, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 9.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any Holder, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 9.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, three (3) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of Section 9.02(c)), when delivered.

(b) Effectiveness of Facsimile Documents and Signatures. Preferred Documents may be transmitted and/or signed by facsimile or other electronic communication. The effectiveness of any such documents and signatures shall have the same force and effect as manually signed originals and shall be binding on all Company Parties and the Holders.

(c) Reliance by Holders. The Holders shall be entitled to rely and act upon any notices purportedly given by or on behalf of any Company Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to any Holder may be recorded by such Holder, and each of the parties hereto hereby consents to such recording.

(d) Notice of Significant Event. The Holders agree to provide notification to the Company of any event, not otherwise reported by the Company pursuant to Article VI hereof, of

which the Holders become actually aware other than through notification from the Company that will, if not cured within the applicable time period allocated for cure, result in a Significant Event in respect of which the Holders would intend to, or do ultimately, exercise remedies provided for in such instance; provided, that any failure to provide such notice shall not limit in any way the Holders' rights and remedies hereunder or under any other Preferred Document unless such failure is finally determined by a court of competent jurisdiction to have resulted from the Holders' affirmative bad faith or willful misconduct.

SECTION 9.03 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of any Holder, any right, remedy, power or privilege hereunder or under the other Preferred Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

SECTION 9.04 Survival of Representations and Warranties. All representations and warranties made hereunder and in the other Preferred Documents shall survive the execution and delivery of this Agreement and purchase and sale of the Series G Preferred Stock hereunder.

SECTION 9.05 Payment of Expenses and Taxes; Indemnification.

(a) The Company agrees, to pay or reimburse Investors for all their reasonable and documented out-of-pocket expenses incurred in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Preferred Documents and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, up to an aggregate amount of $500,000.

(b) The Company agrees to indemnify, hold harmless, reimburse and defend the Holders and their respective Related Parties against all claims, costs, expenses, liabilities, obligations, losses or damages (including reasonable legal fees) of any nature, incurred by or imposed upon such Person which result, arise out of or are based upon: (i) any misrepresentation by a Company Party or breach of any warranty by a Company Party in this Agreement or in any other Transaction Document; (ii) any breach or default in performance by a Company Party of any covenant or undertaking to be performed by such a Company Party hereunder, under this Agreement or any Transaction Document; or (iii) the status of any Investor as a purchaser of the Series G Preferred Stock or a Holder (all the foregoing in this Section 9.05, collectively, the "**indemnified liabilities**"); provided, that the Company Parties shall have no obligation hereunder to the Holders or any of their Related Parties with respect to indemnified liabilities arising from (i) the gross negligence or willful misconduct of the party to be indemnified or one of their Related Parties or (ii) a material breach of such indemnified person (or one of its Related Parties), or (iii) disputes among the Holders and/or their transferees. To the fullest extent permitted by Applicable Law, no Company Party shall assert, and each Company Party hereby waives, any claim against Investors and their respective Related Parties, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to

direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any other Transaction Document, the transactions contemplated hereby or thereby, any Series G Preferred Stock or the use of the proceeds of the sale of the Purchased Shares. Neither Investors nor any of their respective Related Parties shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Transaction Documents or the transactions contemplated hereby or thereby, unless such damages arise from the gross negligence or willful misconduct of such Person.

SECTION 9.06 Successors and Assigns; Participations and Assignments.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) except as set forth in Section 9.03, no Company Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Required Holders (and any attempted assignment or transfer by any Company Party without such consent shall be null and void) and (ii) no Holder may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.06. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in Section 9.06(c)) and, to the extent expressly contemplated hereby, the Related Parties of each of the Holders) any legal or equitable right, remedy or claim under or by reason of this Agreement. Notwithstanding anything to the contrary herein, (a) any Holder may grant a security interest or otherwise assign as collateral, any of its rights under the Preferred Documents, whether owned at the Closing Date or thereafter acquired to (A) any federal reserve bank (pursuant to Regulation A of Board of Governors) or (B) any holder of, or agent or trustee for the benefit of the holders of, such Holder's (or any of such Holder's Affiliates') Indebtedness or equity securities; provided that, solely because of such grant or assignment, absent any foreclosure thereon, no such Holder shall be relieved of any of its obligations under this Agreement.

(b) (i) Subject to the conditions set forth in subsection (b)(ii) below, any Holder may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of the Series G Preferred Stock held by such Holder), with the prior written consent (which consent in each case shall not be unreasonably withheld or delayed) of the Company; provided, that the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the transferring Holder within five (5) Business Days after having received notice thereof. Notwithstanding anything to the contrary, in no event shall the consent of the Company be required for an assignment (1) to any assignee if a Default or Event of Default has occurred and is continuing, (2) a Holder, (3) an Affiliate of a Holder, (4) an Approved Fund or (5) the Company or any Subsidiary of the Company in connection with any optional redemption of Series G Preferred Stock pursuant to the Charter.

(ii) Assignments shall be subject to the following additional conditions: (A) each assignee shall agree in a writing delivered to the Company to be bound by the terms of the Stockholders Agreement as a stockholder of the Company; (B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Holder's rights and obligations under this Agreement; and (C) the parties to each assignment shall execute and deliver to the Company an Assignment and Acceptance.

(iii) Subject to acceptance thereof pursuant to Section 9.06(b)(iv), from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of a Holder under this Agreement, and the assigning Holder thereunder shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of the assigning Holder's rights and obligations under this Agreement, such Holder shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 10.05). Any assignment or transfer by a Holder of rights or obligations under this Agreement that does not comply with this Section 9.06 shall be treated for purposes of this Agreement as a sale by such Holder of a participation in such rights and obligations in accordance with Section 9.06(c).

(iv) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Holder and an assignee and any written consent to such assignment required by Section 9.06(b)(i), the Company shall accept such Assignment and Acceptance.

(c) Any Holder may, without the consent of the Company, sell participations to one or more banks or other entities (other than a natural person or the Company or any of the Company's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Holder's rights and obligations under this Agreement (including all or a portion of its Series G Preferred Stock); provided, that (A) such Holder's obligations under this Agreement shall remain unchanged, (B) such Holder shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Company and the other Holders shall continue to deal solely and directly with such Holder in connection with such Holder's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Holder sells such a participation shall provide that such Holder shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement or any other Preferred Document; provided, that such agreement or instrument may provide that such Holder will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clause (i) of the first proviso to Section 9.01. To the extent permitted by law, each Participant shall be entitled to the benefits of Section 9.06(b) as though it were a Holder, provided, that such Participant agrees to be subject to Section 9.08(a) as though it were a Holder.

SECTION 9.07 Specific Performance. The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach

of one or more of the provisions of this Agreement, any party to this Agreement who may be injured (in addition to any other rights and remedies that may be available to such Person under this Agreement, any other agreement or under Applicable Laws, shall be entitled (without posting a bond or other security) to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

SECTION 9.08 Adjustments; Set-off.

(a) If any Holder (a "**benefited Holder**") shall at any time receive any payment of all or part of its Series G Preferred Stock, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Section 8.01(h), or otherwise), in a greater proportion than any such payment to or collateral received by any other Holder, if any, in respect of such other Holder's Series G Preferred Stock, such benefited Holder shall purchase for cash from the other Holders a participating interest in such portion of each such other Holder's Series G Preferred Stock, or shall provide such other Holders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such benefited Holder to share the excess payment or benefits of such collateral or proceeds ratably with each of the Holders; provided, that (i) if all or any portion of such excess payment or benefits is thereafter recovered from such benefited Holder, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest and (ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Company pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Holder as consideration for the assignment of or sale of a participation in any of its Series G Preferred Stock to any assignee or participant (as to which the provisions of this Section shall apply). Each Company Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Holder acquiring a participation pursuant to the foregoing arrangements may exercise against such Company Party rights of setoff and counterclaim with respect to such participation as fully as if such Holder were a direct creditor of such Company Party in the amount of such participation.

(b) After the occurrence and during the continuance of an Event of Default, to the extent consented to by the Required Holder, in addition to any rights and remedies of the Holders provided by law, each Holder shall have the right, without prior notice to the Company or any other Company Party, any such notice being expressly waived by the Company Parties to the extent permitted by Applicable Law, upon any amount becoming due and payable by the Company hereunder (whether upon exercise of a put right, optional redemption right or otherwise) to set-off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Holder or any branch or agency thereof to or for the credit or the account of the Company, as the case may be. Each Holder agrees promptly to notify the Company after any such set-off and application made by such Holder; provided, that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 9.09 Counterparts. This Agreement and the other Preferred Documents may be executed by one or more of the parties thereto on any number of separate counterparts (including by facsimile or other electronic transmission), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

SECTION 9.10 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 9.11 Integration. This Agreement and the other Preferred Documents represent the agreement of the Company Parties and the Holders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by any party hereto or thereto relative to the subject matter hereof not expressly set forth or referred to herein or in the other Preferred Documents.

SECTION 9.12 GOVERNING LAW. THIS AGREEMENT, THE OTHER PREFERRED DOCUMENTS (UNLESS EXPRESSLY PROVIDED OTHERWISE THEREIN) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ILLINOIS, WITHOUT REFERENCE TO CONFLICTS OF LAW PROVISIONS.

SECTION 9.13 Submission to Jurisdiction; Waivers. Each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Preferred Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of Illinois, the courts of the United States and appellate courts from any thereof located in Chicago, Illinois;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the applicable party at its respective address set forth on Schedule 9.02 or at such other address of which the Company and the Holders shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction;

(e) waives, to the maximum extent not prohibited by law, all rights of rescission, setoff, counterclaims, and other defenses in connection with the payment of the obligations under this Agreement and the other Preferred Documents; and

(f) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section 9.13 any special, exemplary, punitive or consequential damages.

SECTION 9.14 Acknowledgments. Each Company Party hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Preferred Documents;

(b) none of the Holders has any fiduciary relationship with or duty to the Company Parties arising out of or in connection with this Agreement or any of the other Preferred Documents, and the relationship between the Holders, on one hand, and the Company Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Preferred Documents or otherwise exists by virtue of the transactions contemplated hereby among the Holders or among the Company Parties and the Holders.

SECTION 9.15 WAIVERS OF JURY TRIAL. **THE COMPANY PARTIES AND INVESTORS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER PREFERRED DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN**.

SECTION 9.16 Confidentiality.

(a) Each Holder shall hold all non-public information relating to any Company Party or any Subsidiary of any Company Party obtained pursuant to the requirements of this Agreement or in connection with such Holder's evaluation of whether to become a Holder hereunder ("**Confidential Information**") confidential in accordance with its customary procedure for handling confidential information of this nature and (in the case of a Holder that is a bank) in accordance with safe and sound banking practices; provided, that Confidential Information may be disclosed by any Holder:

(i) as required or requested by any governmental agency or representative thereof;

(ii) pursuant to legal process;

(iii) in connection with the enforcement of any rights or exercise of any remedies by such Holder under this Agreement or any other Preferred Document or any action or proceeding relating to this Agreement or any other Preferred Document;

(iv) to such Holder's attorneys, professional advisors, independent auditors or Affiliates,

(v) in connection with:

(A) the establishment of any special purpose funding vehicle with respect to the Series G Preferred Stock,

(B) any prospective assignment of, or participation in, its rights and obligations pursuant to Section 9.06, to prospective assignees or Participants, as the case may be;

(C) any actual or proposed credit facility for loans, letters of credit or other extensions of credit to or for the account of such Holder or any of its Affiliates, to any Person providing or proposing to provide such loan, letter of credit or other extension of credit or any agent, trustee or representative of such Person; or

(vi) with the consent of the Company;

provided, that in the case of clause (e) hereof, the Person to whom Confidential Information is so disclosed is advised of and has been directed to comply with the provisions of this Section 9.16.

(b) Notwithstanding the foregoing, (A) each of the Holders and any Affiliate thereof is hereby expressly permitted by the Company Parties to refer to any Company Party and any of their respective Subsidiaries in connection with any promotion or marketing undertaken by such Holder or Affiliate and, for such purpose, such Holder or Affiliate may utilize any trade name, trademark, logo or other distinctive symbol associated with such Company Party or such Subsidiary or any of their businesses, provided, that no promotional, advertising or marketing materials (in any media, including electronic) using or disclosing any Company Party's name, any other information with respect to any Company Party, the amounts of the Loans, or general information on the purpose of the Loans may be disclosed without the Company's prior consent, which consent shall not be unreasonably withheld or delayed, and (B) any information that is or becomes generally available to the public (other than as a result of prohibited disclosure by any Holder) shall not be subject to the provisions of this Section 9.16.

(c) **EACH HOLDER ACKNOWLEDGES THAT CONFIDENTIAL INFORMATION (AS DEFINED IN THIS SECTION 9.16) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE COMPANY AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

(d) **ALL INFORMATION, INCLUDING WAIVERS AND AMENDMENTS, FURNISHED BY THE COMPANY PARTIES PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE COMPANY PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH HOLDER REPRESENTS TO THE COMPANY PARTIES THAT IT HAS IDENTIFIED TO THE COMPANY (ON SCHEDULE 9.02 OR OTHERWISE) A CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.**

SECTION 9.17 Press Releases, etc. Each Company Party will not, and will not permit any of its respective Subsidiaries, directly or indirectly, to publish any press release or other similar public disclosure or announcements (including any marketing materials) regarding this Agreement, the other Preferred Documents, the Transaction Documents, or any of the Transactions, without the consent of the Required Holders, which consent shall not be unreasonably withheld.

SECTION 9.18 USA Patriot Act. Each Holder hereby notifies each Company Party that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies the Company Parties, which information includes the name and address of each Company Party and other information that will allow such Holder to identify each Company Party in accordance with the Patriot Act. Each Company Party agrees to provide all such information to the Holders upon request by any Holder at any time, whether with respect to any Person who is a Company Party on the Closing Date or who becomes a Company Party thereafter.

SECTION 9.19 No Fiduciary Duty. Each Company Party, on behalf of itself and its Subsidiaries, agrees that in connection with all aspects of the transactions contemplated hereby and any communications in connection therewith, the Company Parties, their respective Subsidiaries and Affiliates, on the one hand, and the Holders and their respective Affiliates, on the other hand, will have a business relationship that does not create, by implication or otherwise, any fiduciary duty on the part of the Holders or their respective Affiliates, and no such duty will be deemed to have arisen in connection with any such transactions or communications.

SECTION 9.20 Authorized Officers. The execution of any certificate requirement hereunder by an Authorized Officer shall be considered to have been done solely in such Authorized Officer's capacity as an officer of the applicable Company Party (and not individually). Notwithstanding anything to the contrary set forth herein, the Holders shall be entitled to rely and act on any certificate, notice or other document delivered by or on behalf of any Person purporting to be an Authorized Officer of a Company Party and shall have no duty to inquire as to the actual incumbency or authority of such Person.

SECTION 9.21 Lending Relationship. Notwithstanding anything herein to the contrary, nothing contained in this Agreement shall affect, limit or impair the rights and remedies

of any party to this Agreement (or its Affiliates) in its capacity as a lender to the Company or any other Company Party pursuant to any agreement under which the Company or any of its Subsidiaries has borrowed money. Without limiting the generality of the foregoing, no such lender (or its Affiliates), in exercising its (or their) rights as a lender, including making its (or their) decision on whether to foreclose on any collateral security, shall have any duty to consider (a) its status as a direct or indirect equity holder of the Company, (b) the interests of the Company or (c) any duty it may have to any other direct or indirect equity holder of the Company, except as may be required under the applicable loan documents or by Applicable Law.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Agreement to be duly executed and delivered as of the date first above written.

COMPANY:

EDUCATION CORPORATION OF AMERICA,
a Delaware corporation

By: _____
By: Christopher Boehm
Its: Executive Vice President, Chief Financial Officer and Treasurer

OTHER COMPANY PARTIES:

EDUCATION CORPORATION OF ALABAMA

By:_____
Name: Christopher Boehm
Title: Chief Financial Officer

NEW ENGLAND COLLEGE OF BUSINESS AND FINANCE, LLC

By:_____
Name: Christopher Boehm
Title: Chief Financial Officer

VIRGINIA COLLEGE, LLC

By:_____
Name: Christopher Boehm
Title: Chief Financial Officer

MEDICAL CAREER CENTER, INC.

By:_____
Name: Christopher Boehm
Title: Chief Financial Officer

HERITAGE-KHEC, INC.

By:_____
Name: Christopher Boehm
Title: Chief Financial Officer

SAWYER COLLEGE, INC.

By:_____
Name: Christopher Boehm
Title: Chief Financial Officer

CULINARD, LLC

By:_____
Name: Christopher Boehm
Title: Chief Financial Officer

JY MONK REAL ESTATE TRAINING CENTER, INC.

By:_____
Name: Christopher Boehm
Title: Chief Financial Officer

SAN DIEGO GOLF ACADEMY

By:_____
Name: Christopher Boehm
Title: Chief Financial Officer

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this Series G Preferred Stock Purchase Agreement to be duly executed and delivered as of the date first above written.

COMPANY:

EDUCATION CORPORATION OF AMERICA,
a Delaware corporation

By: _____
Name:
Title:

INVESTORS:

MONROE CAPITAL CORPORATION

By: _____
Name: Kyle Asher
Title: VP

MONROE CAPITAL SENIOR SECURED DIRECT LOAN FUND LP

By: Monroe Capital Senior Secured Direct Loan Fund LLC, its general partner

By: _____
Name: Kyle Asher
Title: VP

MONROE CAPITAL SENIOR SECURED DIRECT LOAN FUND (UNLEVERAGED) LP

By: Monroe Capital Senior Secured Direct Loan Fund LLC, its general partner

By: _____
Name: Kyle Asher
Title: VP

MONROE CAPITAL PRIVATE CREDIT FUND II LP

By: Monroe Capital Private Credit Fund II LLC,
its general partner

By: _____
Name: Kyle Asher
Title: VP

MONROE CAPITAL PRIVATE CREDIT FUND II (UNLEVERAGED) LP

By: Monroe Capital Private Credit Fund II LLC,
its general partner

By: _____
Name: Kyle Asher
Title: VP

MONROE CAPITAL PARTNERS FUND LP

By: Monroe Capital Partners Fund LLC,
its general partner

By: _____
Name: Kyle Asher
Title: VP

Annex I

SCHEDULE OF INVESTORS

NAME OF INVESTOR	INVESTMENT AMOUNT	SHARES OF SERIES G PREFERRED STOCK
1. Monroe Capital Corporation	$8,333,333.33	8,333
2. Monroe Capital Senior Secured Direct Loan Fund LP	$3,623,129.65	3,623
3. Monroe Capital Senior Secured Direct Loan (Unleveraged) LP	$3,043,537.02	3,044
4. Monroe Capital Private Credit Fund II LP	$17,821,531.51	17,821
5. Monroe Capital Private Credit Fund II (Unleveraged) LP	$1,622,912.93	1,623
6. Monroe Capital Partners Fund LP	$5,555,555.56	5,556
Total:	**$40,000,000.00**	**40,000**