

BUSINESS AFFAIRS AND HUMAN RESOURCES
MAY 18, 2023

UNIVERSITY OF IDAHO

SUBJECT

Formation of Affiliated Entity to Acquire Private Higher Education Institution and Authorization for Execution of Asset Purchase Agreement

REFERENCE

March 22, 2023	Executive Session to consider negotiations regarding acquisition of higher education institution
April 25, 2023	Executive Session to consider negotiations regarding acquisition of higher education institution.
May 15, 2023	Executive Session to consider negotiations regarding acquisition of higher education institution.

APPLICABLE STATUTE, RULE, OR POLICY

- Idaho State Board of Education Governing Policies & Procedures, Section V.C.1.c Spending Authority, University of Idaho and Regents of the University of Idaho
- Idaho Constitution, Article IX, Section 2. Board of Education. General supervision of the state educational institutions.
- I.C. 33-2802. BOARD OF REGENTS. The general supervision, government and control of the University of Idaho.
- Chapter 30, Title 30, Idaho Code - the Idaho Nonprofit Corporation Act

BACKGROUND/DISCUSSION

The University of Idaho (University) seeks approval from the Regents of the University of Idaho (Regents) for the formation of NewU, Inc., an Idaho non-profit corporation (NewU, Inc.) to qualify under Internal Revenue Code section 501(c)(3) for the purpose of acquiring substantially all of the operating assets and assuming certain of the operating liabilities of the University of Phoenix, Inc., an Arizona corporation (UPh) and to thereafter operate an accredited institution of higher education in substantially the same manner as is currently operated by UPh.

University of Phoenix is an institution of higher learning that has served mostly working adult learners with dependents for almost 50 years. Started in 1976, the university offers flexible online learning options for non-traditional students. Historically, University of Phoenix included physical locations in cities across the country, but the university now delivers education primarily in an online format due to the overwhelming preference of its students and prospective students choosing to access the flexible, innovative online learning environment.

The Regents will serve as the sole member of NewU, Inc., with authority to appoint and remove the directors of NewU, Inc. and to have all of the powers and authorities of a sole member under Chapter 30, Title 30, Idaho Code (the Idaho

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Nonprofit Corporation Act), and pursuant to the organic documents of NewU, Inc. In anticipation of the approval of the Regents as requested by the University, but without obligating the Regents to so approve, the initial Articles of Incorporation for NewU, Inc. have been filed with the Idaho Secretary of State. Attachment 1 to these materials is a copy of the initial Articles of Incorporation for NewU, Inc. and Attachment 2 to these materials is a copy of the initial Bylaws for NewU, Inc. to be adopted by the initial board of directors of NewU, Inc. to facilitate the subject transaction. The University seeks ratification and approval by the Regents of Attachments 1 and 2 and the incorporation of NewU, Inc. as evidenced by Attachment 1. On or prior to closing the subject transaction, it is the intent that NewU, Inc., subject to the approval of its sole member, will amend and restate the initial Bylaws to provide for the post-closing governance structure of NewU, Inc.

Attachment 3 to the materials presented to the Regents is a Term Sheet which describes in summary fashion the proposed terms of an Asset Purchase Agreement (APA) under which NewU, Inc. will acquire substantially all of the operating assets and assume certain of the operating liabilities of UPh, and the University, acting by and through the Regents, will agree to certain terms in conjunction with the operation of NewU, Inc. Specifically, the University will: 1) co-sign with NewU, Inc. a Program Participation Agreement with the United States Department of Education under which NewU, Inc. will be authorized to participate in federal financial aid programs; and 2) the University may supply a backstop guaranty of certain financial obligations of NewU, Inc. in the event cash flows from the operations of NewU, Inc. in any given year are insufficient for NewU, Inc. to fully meet debt service obligations for the financing necessary to fund the purchase contemplated under the APA. The backstop guaranty will not exceed \$10 million in any one year for replenishment of a debt service reserve. It will not obligate the credit of the state of Idaho nor obligate the Legislature of the State of Idaho to appropriate funds for any payment due thereunder.

Details regarding the anticipated financing for the transactions contemplated by the APA are more specifically described below under Impact. The University seeks approval from the Regents of the terms of the APA as summarized in the Term Sheet, Attachment 3, and the Regents' authorization for the University President and the University Vice President for Finance and Administration to execute the APA and all related transaction documents as applicable to the University, upon certification by legal counsel to the Regents that the terms of the APA are consistent in all material respects with (or no less favorable than those described in) the Term Sheet.

Closing of the acquisition and associated financing will likely not occur before late 2023 or early 2024 because approvals from The Higher Learning Commission (HLC), the accrediting body for UPh (which will also be the accrediting body for NewU, Inc.) as well as from Northwest Commission on Colleges and Universities (NWCCU), the accrediting body for the University of Idaho, are a condition of closing. Closing is also contingent upon receipt of the official letter from the Internal

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Revenue Service acknowledging that NewU, Inc qualifies as a public charity under section 501(c)(3) of the Internal Revenue Code. Lastly, closing does not occur until sufficient funds from the anticipated financing are in hand to fully fund the purchase.

Attachment 4 to the materials submitted to the Regents is a resolution documenting the approvals associated with the formation of NewU, Inc. and the execution of the APA and related transactions by the University as described above. The University seeks approval of the resolution to be evidenced by the signature of the President of the Regents of the University of Idaho.

The University believes that the formation of NewU, Inc., and the consummation of the transactions contemplated under the APA will be in the best interest of the University and of the State of Idaho. The institution of higher education to be operated through NewU, Inc., will encompass the top-of-class on-line operations now encompassed within UPh. The affiliation between the University of Idaho and NewU, Inc. can make these operations available to aid in the education of Idaho citizens throughout the state and at every level of the Idaho education system, and do so in a synergistic fashion that mutually benefits the State of Idaho, the University of Idaho and NewU, Inc.

IMPACT

NewU Inc. anticipates financing acquisition of the UPh assets with a capital raise estimated to be \$685,000,000. The capital raise will provide funds for the following estimated uses: \$550,000,000 purchase price; \$26,000,000 working capital / liquidity; \$68,225,000 required reserves and \$40,000,000 costs of issuance. Under the Asset Purchase Agreement, the Seller has agreed to leave \$200,000,000 of unrestricted cash on the balance sheet of NewU, Inc., in addition to normal working capital, at financial close.

The financing is intended to be executed through a public market bond transaction structured as level debt service with an estimated 21-year final maturity. Current estimates include 80% of tax-exempt financing and 20% taxable. Lenders are expected to require the following financial covenants of NewU, Inc.: (1) debt service coverage ratio of 1.25 – 1.50x and; (2) liquidity covenant of 60 days cash on hand. The primary security available for lenders will be a lien on NewU Inc. revenues and mortgages on any physical and potential intangible assets. Actual terms of this financing will be subject to financial conditions at the time of closing.

NewU Inc.'s obligation to close on the Asset Purchase Agreement will be subject to its ability to access the capital markets and will be a condition precedent for closing.

The University anticipates receiving financial benefits from NewU, Inc. initially in the amount of \$10,000,000 annually. Additional supplemental benefits of up to

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approximately 25-30% of surplus cash flow may also be available subject to the financial performance of NewU, Inc.

It is possible that the University may need to provide financial support for NewU, Inc. This is currently anticipated to come in the form of up to \$10,000,000 per year in backstop guaranty of certain financial obligations of NewU, Inc., and a line of credit up to \$25,000,000 to be provided by the Strategic Investment Fund¹.

NewU, Inc. is anticipated to be treated as a blended component unit on the University's financial statements and included in the rating agencies' credit assessment of the University's credit strength. NewU, Inc.'s projected operating performance is anticipated to generate positive net cash flows, which will improve its balance sheet over time. NewU Inc.'s initial leverage may present a challenge to the University's credit ratings in the short-term. Initial quantitative credit assessments result in a one-notch downgrade of the University's credit from "A1" to "A2" assuming the University continues to be treated as a public university by the rating agencies.

ATTACHMENTS

Attachment 1 – Initial Articles of Incorporation for NewU, Inc.

Attachment 2 – Initial Bylaws of NewU, Inc.

Attachment 3 – Asset Purchase Agreement Term Sheet

Attachment 4 - Resolution of The Regents of the University of Idaho

BOARD STAFF COMMENTS AND RECOMMENDATIONS

The University of Idaho (UI) was approached in March 2023 with the possibility of acquiring the University of Phoenix. The Board of Education met in executive session with UI leadership to evaluate the opportunities and risks associated with the proposed acquisition. Board members also consulted with the Governor regarding the acquisition. The UI retained a team of local and national accounting, finance, legal and regulatory experts to perform an exhaustive due diligence of the contemplated transaction. Likewise, Board members have also provided a significant level of scrutiny to the proposal.

The acquisition would provide UI and the State of Idaho access to a turnkey platform for delivery of online education at scale. It would help address the need for access to post-secondary education in the rural and remote areas of Idaho. Given demographic trends, it will diversify UI's enrollment and revenue portfolio. Financial benefits to UI will accrue immediately and on a recurring basis.

There are risks associated with the acquisition, but based on what is known at this time, those risks have been mitigated in the transaction price and other contingencies. Maximum financial exposure to UI is \$10M annually, but cash flow modeling of NewU shows it generates unrestricted cash flow well in excess of that amount annually. The total purchase price is \$550M. The total bond issuance is estimated at \$685M. The \$135M difference is related to capital market

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requirements and costs. These estimated terms are very conservative for a bond closing that may not occur for another six months.

As previously referenced, UPh is accredited by HLC, a highly reputable and U.S. Department of Education-recognized accreditor. UPh was recently reaccredited for a period of 10 years.

BOARD ACTION

I move to approve the Resolution proposed by the University of Idaho, the title of which is as follows:

A RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF IDAHO (A) AUTHORIZING CREATION OF NEWU, INC., AND (B) AUTHORIZING THE ACQUISITION BY NEWU, INC. OF SUBSTANTIALLY ALL OF THE ASSETS AND ASSUMPTION OF CERTAIN LIABILITIES OF THE UNIVERSITY OF PHOENIX, INC. AND RELATED TRANSACTIONS.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

ⁱ The Strategic Investment Fund holds and invests the proceeds from the University's P3 transaction that closed in FY21. P3 funds of approximately \$180,000,000 were deposited in the fund.

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Date Filed: 5/15/2023 12:09:00 PM

**ARTICLES OF INCORPORATION
OF
NEWU, INC.**

The undersigned, acting as the incorporator of a nonprofit corporation (“**Corporation**”) organized under and pursuant to the Idaho Nonprofit Corporation Act, Chapter 30, Title 30, Idaho Code (“**Act**”), adopts the following Articles of Incorporation (“**Articles**”).

**ARTICLE I
NAME OF THE CORPORATION**

The name of the Corporation is NewU, Inc.

**ARTICLE II
STATUS**

The Corporation is a nonprofit corporation.

**ARTICLE III
PERIOD OF DURATION**

The duration of the Corporation is perpetual.

**ARTICLE IV
MAILING ADDRESS
REGISTERED AGENT NAME & ADDRESS**

The Corporation’s initial mailing address is 875 Perimeter Drive, Moscow, Idaho 83844. The Corporation’s initial registered agent is Kent Nelson with an address of 875 Perimeter Drive, Moscow, Idaho 83844.

**ARTICLE V
PURPOSES AND POWERS**

The Corporation is organized exclusively for charitable, scientific, literary, or educational purposes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time (“**Code**”), or the corresponding provisions of any future United States internal revenue law. In furtherance of and consistent with the foregoing general purpose, the Corporation’s specific purpose includes:

1. To establish, operate, conduct, and administer a degree granting and credit bearing institution of higher education affiliated with The Regents of the University of Idaho, a body corporate established pursuant to Chapter 28, Title 33, Idaho Code, and Section 10, Article IX, of the Idaho Constitution (the “**University of Idaho**”).

2. To provide for the instruction of students, the assessment of competencies, and the award of graduate and undergraduate degrees, diplomas, certificates, or the like as may be appropriate.

3. To offer, operate, conduct, and administer instructional or educational programs, including certificate programs, short courses, professional development courses, associate’s, bachelor’s, master’s and doctoral degrees, through onsite, online, or any combination of these or other instructional modalities.

4. To engage in any other lawful activity for which non-profit corporations may be incorporated under the Act not otherwise inconsistent with the Corporation’s general purpose and Article VI.

The Corporation shall have and may exercise all powers granted by law necessary and proper to carry out the foregoing purposes. The Corporation may carry out its purpose and exercise its powers either within or outside the State of Idaho, so long as the furtherance of such purpose or the exercise of such power is lawful in the jurisdiction in which it is done.

**ARTICLE VI
LIMITATIONS**

No part of the net earnings or the assets of the Corporation shall inure to the benefit of, or be distributable to any trustee, director, officer, or other private persons except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article V hereof. No substantial part of the activities of the Corporation shall be for the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Code.

**ARTICLE VII
MEMBERS**

The Corporation shall have one member. The sole member of the Corporation is the University of Idaho (the “**Member**”). The Member shall have such rights as are provided in the Act that are consistent with the management authority these Articles grant the Board of Directors of the Corporation.

**ARTICLE VIII
BOARD OF DIRECTORS**

The affairs of the Corporation shall be managed by its Board of Directors (“**Board of Directors**”). The number of Directors serving on the Board of Directors shall at all times be no less than three (3) and whose number shall be fixed from time to time in accordance with the Bylaws of the Corporation (each a “**Director**” and collectively “**Directors**”).

Other than the Directors constituting the initial Board of Directors, the Directors shall be appointed solely by the Member and in the manner and for the term provided in the Bylaws of the Corporation. The term of the initial Directors shall be until the first annual meeting of the Corporation or until their successors are duly appointed and qualified.

The number of Directors constituting the initial Board of Directors is three (3). The names and addresses of the persons constituting the initial Board of Directors are:

<u>Name</u>	<u>Address</u>
Kent Nelson	875 Perimeter Drive, Moscow, Idaho 83844
Brian Foisy	875 Perimeter Drive, Moscow, Idaho 83844
Torrey Lawrence	875 Perimeter Drive, Moscow, Idaho 83844

**ARTICLE IX
OFFICERS**

The Corporation shall have Officers (“**Officers**”) as provided in the Bylaws. Such Officers shall be elected or appointed by the Directors at such time, and in such manner, and for such terms as may be prescribed in the Bylaws.

**ARTICLE X
DISTRIBUTION ON DISSOLUTION**

Upon dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all liabilities of the Corporation, distribute all the assets of the Corporation consistent with the purposes of the Corporation exclusively to the University of Idaho or other such charitable, scientific, literary, research or educational organizations designated by the University of Idaho, which at that time qualify as exempt organizations under Section 501(c)(3) of the Code, as amended from time to time.

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**ARTICLE XI
INCORPORATOR**

The name and address of the incorporator is:

Kent Nelson
875 Perimeter Drive
Moscow, Idaho 83844

**ARTICLE XII
BYLAWS**

Provisions for the regulation of the internal affairs of the Corporation shall be set forth in the Bylaws of the Corporation (the "Bylaws").

**ARTICLE XIII
LIMITATION OF LIABILITY AND INDEMNIFICATION**

The Officers and Directors of the Corporation will not be personally liable for the Corporation's debts and liabilities, and their personal property is exempt from seizure or levy to pay obligations of the Corporation.

The Corporation shall indemnify, hold harmless, and defend present and former Directors, Officers, employees and agents of the Corporation to the fullest extent permitted by, and in accordance with, the Act as the same exists at the time of the adoption of these Articles or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the Act permitted the Corporation to provide prior to such amendment). Expenses, including attorney fees, incurred by present and former directors, officers, employees and agents of the Corporation in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding in accordance with the Act.

**ARTICLE XIV
AMENDMENTS**

The Articles and Bylaws of the Corporation may be amended according to any procedure authorized by the Act in effect at the time of amendment, subject, however, to Member approval.

DATED: May 15, 2023



Kent Nelson, Incorporator

BYLAWS
OF
NEWU, INC.

1. OFFICES.

1.1 Principal Office. The principal office of the NewU, Inc., an Idaho nonprofit corporation (“**Corporation**”), shall be located at 875 Perimeter Drive, Moscow, Idaho 83844. The Corporation may have such other offices as the Board of Directors may designate or as the business of the Corporation may require from time to time.

1.2 Registered Office. The registered office of the Corporation required by the Idaho Nonprofit Corporation Act, Chapter 30, Title 30, Idaho Code, as may be amended (“**Act**”), to be maintained in the State of Idaho shall be located at 875 Perimeter Drive, Moscow, Idaho 83844 and may be changed from time to time by the Board of Directors.

2. MEMBERS.

2.1 Membership. The Regents of the University of Idaho shall be the Corporation’s sole member (“**Member**”). Membership shall not expire.

2.2 Annual Meeting. The annual meeting of the Member shall be held on such date and at such time as the Member shall fix each year for the purpose of transacting such business as may come before the meeting.

2.3 Special Meetings. The Member, President of the Corporation, or the Board of Directors may call special meetings of the Member for any purpose or purposes.

2.4 Place of Meeting. Member meetings shall be held at the principal office of the Corporation; provided, however, that the Member, President of the Corporation, or the Board of Directors may designate any other place as the location for any annual or special meeting.

2.5 Notice of Meetings. The Member shall be given notice of any Member meeting in a fair and reasonable manner (including by electronic mail), unless otherwise waived by the Member.

2.6 Waiver of Notice. Whenever any notice is required to be given to any member under the provisions of the Act or under the provisions of the Articles of Incorporation of the Corporation (“**Articles**”) or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

2.7 Action by Member Without a Meeting. Any action required or permitted to be taken at a meeting of the Member may be taken without a meeting by written consent, subject to the Act and other laws of the State of Idaho governing the official actions of the Member. The action must be evidenced by one or more written consents describing the action taken and signed by the Member. Such consent shall have the same effect as a unanimous vote of members and may be stated as such in any articles or documents filed with the Idaho Secretary of State under the Act.

3. BOARD OF DIRECTORS.

3.1 General Powers and Standard of Care.

3.1.1 All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of the Board of Directors except as may be otherwise provided in the Act or the Articles. If any such provision is made in the Articles, the powers and duties conferred or imposed upon the Board of Directors by the Act shall be exercised or performed to such extent by such person or persons as shall be provided in the Articles.

3.1.2 A Director shall perform such Director's duties as a Director, including such Director's duties as a member of any committee of the Board of Directors upon which such Director may serve, in good faith, in a manner such Director reasonably believes to be in the best interests of the Corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

3.2 Presumption of Assent. A Director of the Corporation who is present at a meeting of its Board of Directors at which any action on any corporate matter is taken shall be presumed to have assented to the action unless such Director's dissent shall be entered in the minutes of the meeting or unless such Director shall file such Director's written dissent to such action with the Secretary of the meeting before the adjournment thereof or shall forward such dissent by certified or registered mail to the Secretary of the Corporation within three days after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

3.3 Number, Term, and Appointment of Directors. The number of Directors serving on the Board of Directors shall initially be three. Each Director shall serve a term of one year, or until his or her successor is elected and qualified, or until such Director's death or earlier resignation or removal in the manner hereinafter provided or as otherwise permitted under the Act. The names and addresses of the members of the first Board of Directors have been stated in the Articles. Upon expiration of such initial Directors' initial term, or upon any such Director's death or earlier resignation or removal, the Member shall appoint Directors to hold office until the next annual meeting of the Board of Directors. The Board of Directors shall be appointed in a like manner every year thereafter.

3.4 Vacancies. Any vacancy occurring in the Board of Directors shall be filled by the

Member. A Director appointed by the Member to fill a vacancy shall serve for the unexpired term of such Director's predecessor in office. Any directorship to be filled by reason of an increase in the number of Directors may be filled by the Board of Directors for a term of office continuing only until the next regular election of Directors.

3.5 Resignation. Any Director may resign at any time by giving written notice to the Corporation. Any such resignation shall take effect at the time specified therein, or if the time when such resignation shall become effective shall not be so specified, then such resignation shall take effect immediately upon its receipt by the Corporation; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

3.6 Removal of Directors. Any director appointed by the Member may be removed with or without cause by the Member at any time as permitted under the Act. The Member shall give written notice of the removal to the Director and either the presiding officer of the Board of Directors or the Corporation's President or Secretary. A removal is effective when the notice is effective unless the notice specifies a future effective date.

3.7 Directors' Meetings.

3.7.1 Meetings of the Board of Directors, regular or special, may be held either within or without the State of Idaho. Unless otherwise specified in this Section 3.7 or in the notice for such meeting, all meetings shall be held at the principal office of the Corporation.

3.7.2 Except as otherwise provided in this Section 3.7, regular or special meetings of the Board of Directors may be called by or at the request of the Member, President of the Corporation, and any Director, as the case may be, upon written or verbal notice thereof given to all other Directors, as the case may be, at least three days before the meeting. The Board of Directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

3.7.3 Members of the Board of Directors may participate in a meeting of the Board of Directors by conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and the participation by such means shall constitute presence in person at a meeting.

3.7.4 The attendance at or participation of a Director or committee member in any meeting shall constitute a waiver of notice of such meeting, except where a Director or committee member attends or participates for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

3.7.5 Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice for such meeting.

3.8 Waiver of Notice. Whenever any notice is required to be given to any Director or committee member under the provisions of the Act, the Articles, or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

3.9 Quorum and Voting Requirements. A majority of the number of Directors fixed by Section 3.3 of these Bylaws shall constitute a quorum for the transaction of business at meetings of the Board of Directors. The act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

3.10 Action without a Meeting. Any action required by the Act to be taken at a meeting of the Board of Directors of the Corporation, or any action that may be taken at a meeting of the Directors, may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the Directors, as the case may be. Such consent shall have the same effect as a unanimous vote.

3.11 Ad Hoc Committees. The Board of Directors may, from time to time, organize standing or ad hoc committees to provide greater insight into specific areas for which the Corporation's Board of Directors is responsible. Said committees are to be chaired by a Director and serve with other Directors and non-directors who have expertise relating to specific committee responsibilities. Committee chair or member assignments may change at any time as approved by the Board of Directors.

3.12 Compensation. No Director or committee member shall receive a salary or compensation for services in that capacity but may be reimbursed for actual expenses incurred in the performance of such services. This provision shall not preclude any Director from serving the Corporation in any other capacity and receiving compensation for services rendered. However, no Director shall be related to any salaried staff or to parties providing services to the Corporation.

3.13 Loans to Directors or Officers. The Corporation shall not lend money to or use its credit to assist its Directors or officers.

4. OFFICERS.

4.1 Number. The officers of the Corporation shall consist of a President, Secretary, and Treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term of Office. The officers of the Corporation shall be elected annually at the annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon as practicable thereafter. Each officer shall hold office until a successor shall have been duly elected and shall have qualified, until such officer's death, or until such officer shall resign or shall have been removed in the manner hereinafter provided.

4.3 Removal. Any officer or agent may be removed by the Board of Directors whenever in its judgment, the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

4.4 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

4.5 President. The President shall be a member of the Board of Directors other than the Vice President for Finance and Administration and shall be the principal executive officer of the Corporation and, subject to the control of the Board of Directors, shall, in general, supervise and control all of the business and affairs of the Corporation. The President shall, when present, preside at all meetings of the Board of Directors. The President may sign, with the Secretary or any other proper officer of the Corporation thereunto authorized by the Board of Directors, any promissory notes, deeds, mortgages, leases, contracts, or other instruments that the Board of Directors has authorized to be executed, except in the cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed.

4.6 Secretary. The Secretary shall attend all meetings of the Board of Directors and shall prepare and maintain proper minutes of those meetings. The Secretary shall be the custodian of the official seal of the Corporation, if any, and shall affix that seal on all documents executed on behalf of the Corporation, pursuant to due authorization by the Board of Directors. The Secretary shall have the custody of and properly protect all executed deeds, leases, agreements and other legal documents and records to which the Corporation is a party or by which it is legally affected. The Secretary shall, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to the Secretary by the President or the Board of Directors.

4.7 Treasurer. The Treasurer shall be the principal financial officer of the Corporation and shall have charge and custody of and be responsible for all funds of the Corporation. The Treasurer shall sign all checks and promissory notes of the Corporation and shall receive and give receipts for moneys due and payable to the Corporation from any source whatsoever and deposit all such moneys in the name of the Corporation in such banks, trust companies or other depositories duly selected. The Treasurer shall keep or cause to be kept, adequate and correct accounts of the Corporation, including accounts of its assets, liabilities,

receipts and disbursements. The Treasurer shall submit to the Board of Directors and the President, when required, statements of the financial affairs of the Corporation. The Treasurer shall, in general, perform all of the financial duties incident to the office of Treasurer and such other duties as from time to time may be assigned to the Treasurer by the President or the Board of Directors. In order to fulfill the responsibilities of the office of Treasurer of the Corporation, the Treasurer may present to the President proposals for agreements with the University of Idaho to provide accounting and other necessary support services to the Corporation.

4.8 Salaries. The salaries, if any, of the officers shall be fixed from time to time by the Board of Directors and subject to the approval of the Member. No officer shall be prevented from receiving such salary by reason of the fact that such officer is also a Director of the Corporation. Any compensation paid to an officer shall be reasonable and will be based on the following factors: (i) the amount and type of compensation received by others in similar positions, (ii) the compensation levels paid in our particular geographic community, (iii) the amount of time the individual is spending in their position, (iv) the expertise and other pertinent background of the individual, (v) the size and complexity of the organization, and (vi) the need of the organization for the services of the particular individual.

5. FISCAL YEAR.

The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June in the following calendar year, except that the first fiscal year shall begin on the date of incorporation.

6. CONFLICTS OF INTEREST.

The Board shall adopt and maintain such conflicts of interest policies for directors and officers as may be required, with such modification and amendments as may be approved by the Board from time to time.

7. LIABILITY, INDEMNIFICATION AND INSURANCE.

7.1 No Liability. Directors, Officers, employees, and agents of the Corporation shall not be individually or personally liable for the debts or obligations of the Corporation and shall be indemnified by the Corporation against all financial loss, damage, costs and expense incurred by or imposed upon them in connection with or resulting from any civil or criminal action, suit, proceeding, claim of investigation in which they may be involved by reason of any action taken or omitted to be taken by them in good faith as a Director, Officer, employee, or agent of the Corporation.

7.2 Limitation. The indemnification set forth in Section 6.1 is subject to the condition that a majority of the Board of Directors, provided a quorum is present, who are not parties to such action, suit proceeding, claim of investigation or, if there be no such quorum, independent counsel selected by a quorum of the entire Board of Directors, shall be of the opinion that the involved person or persons exercised and used the same degree of care and skill as a prudent

person would have exercised or used under the circumstances, or that such person took or omitted to take such action in reliance upon advice of counsel of the Corporation, or upon information furnished by a Director or Officer of the Corporation, and accepted in good faith and prudence by such person.

7.3 Successors. The indemnification set forth above shall inure to the benefit of the heirs, executors, and personal representative of any Director, Officer, employee, or agent and shall not be exclusive of any other rights to which such person may be entitled by law or equity or under any resolution adopted by the Board of Directors.

7.4 Insurance. The Corporation shall maintain insurance adequate to cover the operations and activities of its directors, officers and employees. The Corporation shall also maintain general liability coverage. The Board of Directors is authorized to enter into agreements with the University to provide administrative support for the acquisition and maintenance of such insurance, provided all such policies shall be in the name of the Corporation.

8. MISCELLANEOUS.

8.1 Books and Records. At its registered office or principal place of business, the Corporation shall keep: (i) correct and complete books and records of account; (ii) minutes of the proceedings of its Member and Board of Directors; and (iii) a record of the names and addresses of the Member. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

8.2 Contracts. The Board of Directors may authorize any officer or officers, agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

8.3 Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation as provided in these Bylaws or in such manner as shall from time to time be determined by the Board of Directors.

8.4 Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

8.5 Regulation of Internal Affairs. The internal affairs of the Corporation shall be regulated as set forth in these Bylaws to the extent that these Bylaws are lawful under the Act. With respect to any matter not covered in these Bylaws, the provisions of the Act shall be controlling so long as such provisions of the Act are not inconsistent with the lawful provisions of these Bylaws.

8.6 Operating Expenses. The operating expenses of the Corporation may be defrayed by funds contributed directly to the Corporation or from income and other resources of the Corporation, from whatever source realized.

8.7 Amendments. These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the Board of Directors, subject to Member approval, at any regular or special meeting, or by written consent as permitted by these Bylaws and the Act.

The undersigned, being the Secretary of the Corporation, does hereby certify that the foregoing Bylaws were duly adopted as the official Bylaws of the Corporation by unanimous consent of the Directors as of the date set forth below.

DATED: May _____, 2023

Brian Foisy, Secretary

Attachment 3
Term Sheet: Asset Purchase Agreement (APA)

1. Parties
 - a. University of Phoenix, Inc (UPh; Seller)
 - b. NewU, Inc. (NewU; Buyer)
 - c. Regents of the University of Idaho (UI) for limited purposes only
 - d. Apollo Education Group (AEG) for limited purposes only
2. Transaction
 - a. Acquisition by NewU of substantially all of the operating assets and assumption by NewU of certain of the operating liabilities of UPh
 - b. Purchase price of the Operating Assets is \$550,000,000
 - c. Assets: NewU acquires the entirety of the UPh operating assets. General Description:
 - i. Unrestricted cash balance of not less than \$200,000,000 in excess of restricted cash reserves and normal working capital.
 - ii. Receivables; Contracts; Benefit plans and all plan assets; Insurance policies and associated rights and claims (to the extent transferable)
 - iii. Licensed Intellectual Property and Intellectual Property
 - iv. Tangible Personal Property e.g. furniture, fixtures, equipment, machinery, tools etc.
 - v. Leased Real Property
 - vi. Permits, including Environmental Permits required for operations
 - vii. All rights to legal actions related to the assets or operation
 - viii. Prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees (including any such item relating to the payment of non-income Taxes)
 - ix. Books and Records
 - x. Goodwill
 - d. Liabilities: NewU assumes the operating liabilities of UPh. General Description:
 - i. Accounts payable, notes payable, trade payables and expenses payable
 - ii. Current Liabilities (using applicable Accounting Principles) as of the Closing Date
 - iii. Lease Liabilities
 - iv. Obligations for Intellectual Property rights under license or other use agreements with third party IP owners
 - v. Product Liabilities
 - vi. Actions related to UPh Intellectual Property registrations
 - vii. Benefit Plan liabilities
 - viii. Employment and employee liabilities
 - ix. Post closing taxes relating to the purchased assets
3. Financing
 - a. NewU Financing:
 - i. Subject to financial conditions at the time of closing.
 - ii. NewU's obligation to close on the Asset Purchase Agreement will be subject to its ability to access the capital markets and will be a condition precedent for closing.
 - b. Total Capital Raise estimated to be \$685,000,000

- i. Purchase price of \$550,000,000
 - ii. Working capital / liquidity: \$26,000,000
 - iii. Required reserves: 68,225,000
 - iv. Costs of issuance: \$40,000,000
 - c. Lender security: Lien on NewU revenues, mortgage on any physical and potentially on intangible assets
 - d. Bonding (Terms depending on market at time of issuance)
 - i. Combination of tax-exempt and taxable bonds, subject to opinion from tax counsel. Current estimate is 80% tax-exempt / 20% taxable.
 - ii. Amortization structure: Anticipated level debt service for up to 21-years.
 - iii. Anticipated financial covenants for NewU:
 - i. Debt service coverage ratio of 1.25 – 1.50x
 - ii. Liquidity covenant of 60 days cash on hand
 - a. NewU cash on hand at financial close estimated to be \$226,000,000
 - e. Financial consideration to University (estimated)
 - i. \$10,000,000 annual fixed payments senior to debt service
 - ii. 25% of surplus cash flow subject to performance
 - f. Potential University support for NewU (estimated)
 - i. Up to \$10,000,000 annual contingent liability
 - ii. Up to \$25,000,000 line of credit from SIF
 - g. NewU may obtain committed financing to fund all or part of the transactions in the event bond financing is not yet available or insufficient.
 - h. Contingent “Committed” Financing
 - i. Commitment by a financial institution to loan up to the full purchase price amount at the time of closing
 - ii. Funding under the Committed Financing will be only to the extent of any shortfall in the bond proceeds available to pay the purchase price at the time of closing.
 - iii. Terms of the Committed Financing to be negotiated if desired.
- 4. Specific Conditions to Closing
 - a. Buyer and Seller conditions
 - i. HSR Act (antitrust) compliance
 - ii. Pre-closing Educational notices
 - iii. No governmental action restraining or prohibiting transaction or rendering transaction illegal
 - iv. No Civil Action preventing consummation of the transaction
 - b. Buyer Conditions
 - i. Representations and Warranties of seller true and correct
 - ii. Seller’s performance of the terms of the Purchase Agreement
 - iii. No event (Material Adverse Effect) that would have a material adverse effect on the business operations, has occurred since APA signed
 - iv. All required documents executed and delivered
 - v. Financing proceeds have been received by Buyer sufficient to fund the transaction
 - vi. R&W Insurance Policy has been received by Buyer
 - vii. No indication from the US Dep of Education, or other Educational Agency, that transaction will be denied

- viii. HLC accreditor approval for NewU, Inc.
- ix. NWCCU accreditor approval for University of Idaho.
- x. US Dept of Education pre-acquisition review has determined not to require any Title IV letters of credit in excess of 25% of Title IV funding.
- xi. NC-SARA participation approved – or Educational Approvals in place from each state
- xii. Title IV re-certification process underway for Seller and no notice of pending denial of recertification received if Closing occurs after June 30 2023.
- xiii. Insurance policy for certain Title IV liabilities is in place
- xiv. Seller’s Adjusted EBITDA is not lower than the corresponding EBITDA from the EBITDA amount disclosed during due diligence
- xv. No Educational Agency notice of intent to impose approval conditions or limitations that Buyer reasonably expects would impair materially and adversely the ability of Buyer to operate the University after the Closing in substantially the same manner in which it is currently operated
- xvi. No pending actions (lawsuits, government proceedings etc.), other than as disclosed, that would impair materially and adversely the ability of Buyer to operate the University after Closing in substantially the same manner in which it is currently operating
- xvii. Delivery of Closing Date Balance Sheet cash balance
- xviii. Receipt of Buyer 501(c)(3) recognition letter from IRS
- c. Seller Conditions
 - i. Representations and Warranties of buyer true and correct
 - ii. Buyer’s performance of the terms of the Purchase Agreement
 - iii. Seller assurance that US Department of Education payment or guaranty from Seller related to participation in Title IV programs
 - iv. All required documents executed and delivered

5. Representations and Warranties (RW) Sellers General Description:

General Business and Authority

- a. Seller is duly organized in Arizona and has the corporate power, authority and assets to carry on the conduct of the operations of its business.
- b. Seller has the corporate power and authority to enter into, and consummate the transactions in, the asset purchase agreement and related ancillary documents
- c. Seller has no subsidiaries.
- d. Since the Balance Sheet Date of February 28, 2023 until signing of the asset purchase, certain events will not have occurred (e.g. take any action that would material diminish the manner in which it protects its confidential information)
- e. Each of Seller’s material contracts is valid and binding on Seller and there has been no breach or default under such material contracts.
- f. Seller has good, valid and marketable title to the assets that Buyer is acquiring and that the purchased asset constitutes all the assets required to operation the business.
- g. Seller has not owned any real property in the last 7 years and all leases are valid, binding and enforceable and Seller is not in material breach or in default under such leases
- h. There are no legal proceedings pending or outstanding against Seller, its business or the purchased assets or assumed liabilities.

- i. Seller is in compliance with all laws applicable to, and has obtained all permitted required for, the operations of the business and the ownership of the purchased assets.
- j. Seller is compliance with all environmental laws applicable to the operations of the business and the ownership of the purchased assets.

Intellectual Property (IP)

- k. Seller owns the intellectual property (IP) assets being acquired, including registered IP (patents, trademarks, copyrights, domains) and proprietary software and that all employees and contractors who participated in the development of any of Seller's proprietary software conveyed their IP rights to Seller.
- l. Seller has maintained its IP portfolio with the applicable governmental entity (i.e. the US Patent and Trademark Office) and protected its rights in proprietary information and trade secrets.
- m. Seller's inbound and outbound contracts with respect to IP are valid and binding and that Seller has performed its obligations in accordance with such agreements (nor has Seller received a notice of default with respect to any such agreement).
- n. Seller owns or otherwise has the right to use all IP necessary to operate the business of Seller as currently conducted and as contemplated by Seller to be conducted.
- o. Neither the operation of the business of Seller nor any of the IP assets being acquired will infringe any third party IP rights, and that as far as Seller is aware, no third party has infringed any of the IP assets being acquired.
- p. The use of any open source software by Seller does not violate any applicable licensing terms, and none of software or products tied to the operations of the business contains any copyleft or viral code that could require that Seller either license or refrain from enforcing any of its IP rights.
- q. None of Seller's software contains viruses, bugs or defects that materially impact the use, functionality or performance of such software

Title IV and VA Education Benefits

- r. Seller is compliance with key Title IV provisions, Civil Rights laws, all material education laws
- s. Seller is compliance with U.S. Department of Veterans Affairs and U.S. Department of Defense requirements and pandemic relief programs (e.g. CARES Act, CRSSA, and American Rescue Plan).

HR and Benefits

- t. Each Benefit Plan and any related trust has been established, administered and maintained in accordance with its terms and all applicable Laws in all material respects.
- u. Each qualified retirement plan has received a favorable determination letter from the IRS and nothing has occurred that could reasonably be expected to adversely affect its qualified status.
- v. Nothing has occurred with respect to any benefit plan that could reasonably be expected to subject seller, or after the closing, buyer or, to certain penalties under ERISA or the Code.
- w. All benefits, contributions and premiums relating to each benefit plan have been timely paid in accordance with the terms of such benefit plan and all applicable laws and accounting principles, and all benefits accrued under any unfunded benefit plan have

been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with GAAP.

- x. Seller doesn't have or reasonably expects to incur material liability under ERISA or related provisions of the code or applicable local law relating to employee benefit plans.
- y. All premiums to the Pension Benefit Guaranty Corporation have been timely paid.
- z. Seller doesn't have any withdrawal liability under a multiemployer plan.
- aa. Seller doesn't have any liability under defined pension minimum funding rules.
- bb. No benefit plan is a multiemployer plan, multiple employer plan or MEWA.
- cc. No action has been initiated by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a trustee for any plan.
- dd. No plan within the last six years has been a defined benefit plan.
- ee. No "reportable event," as defined in Section 4043 of ERISA, with respect to which the reporting requirement has not been waived, has occurred with respect to any such plan.
- ff. No post-employment or retiree benefits are provided outside of COBRA.
- gg. There is no pending or threatened actions relating to a benefit plan (other than routine claims for benefits).
- hh. No benefit plan has within the past three years been the subject of an examination or audit by a governmental authority or the subject of an application or filing under a voluntary compliance or self correction program.
- ii. Each Benefit Plan that is subject to Section 409A has been administered in compliance with its terms and Section 409A.
- jj. Seller does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A.
- kk. All employees of Seller are employed on an at-will basis and are required to acknowledge and agree to confidentiality, proprietary information and intellectual property obligations pursuant to a standard PIIA agreement.
- ll. Each current independent contractor is party to an independent contractor agreement that has been made available to buyer, and each independent contractor is terminable on thirty (30) or fewer days' notice without any obligation of Seller to pay severance or a termination fee.
- mm. Seller is not bound by any collective bargaining agreement and there has been no threat or actual strike, slowdown or concerted refusal to work overtime or other similar labor disruptions in the past 5 years.
- nn. Seller is in material compliance with all applicable laws pertaining to employment practices, including laws relating to labor relations, wage and hour laws, employment classification, immigration, equal employment opportunities, harassment, employment discrimination, workers' compensation, unemployment insurance and disability rights.
- oo. All compensation owed to employees, independent contractors or consultants has been paid in full.
- pp. Since 2020 there have been no threats, charges, investigations, audits, administrative proceedings or complaints involving current or former employees or independent contractors before the EEOC, NLRA, US DOL, OSHA, OFCCP or any other governmental agency.
- qq. Except as scheduled, since March 1, 2018 no allegation, complaint, charge or claim of sexual harassment, sexual assault, sexual misconduct, gender discrimination or similar behavior has been made against any officer, director, manager or supervisory-level employee of the University and since March 1, 2028, the University has not entered into a settlement agreement relating to same.

- rr. Except as scheduled, since March 1, 2020, Seller has not received a written notice, citation, complaint or charge asserting a violation of OSHA.
- ss. Except as scheduled, since March 1, 2020, Seller has not incurred any Liability under the WARN Act.
- tt. Except as scheduled, during the 180 day period preceding the signing date, there have been no involuntary terminations of employment of any supervisory-level employees.
- uu. Except as scheduled, to the Knowledge of Seller, no officer or current employee earning more than \$150,000 intends to terminate their employment prior to the one year anniversary of the Closing Date.
- vv. Except as scheduled, to the Knowledge of Seller, no current or former employee or independent contractor of the University is in material violation of any non-disclosure agreement, noncompetition agreement, or restrictive covenant agreement.

Government Contracts

- ww. Seller is not, and has not been for the past three years been a federal contractor or subcontractor and has not been for the past three years covered by the provisions of laws enforced by the OFCCP. Seller is not, nor has it been in the past five years been the subject of an audit, investigation, or enforcement action by a governmental authority in connection with a governmental contract or compliance with laws enforced by the OFCCP.
- xx. Seller has not been debarred, suspended or otherwise made ineligible from doing business with the United States government or any government contractor..

Tax Returns

- yy. All tax returns required to be filed by Seller or its affiliates for any period prior to closing have been timely filed and Seller is not a party to any legal proceeding by any taxing authority.

6. Representations and Warranties of Buyer (NewU)

- a. Organization of Buyer
- b. Authority of Buyer
- c. No Conflicts; Consents
- d. Brokers:
- e. Legal Proceedings
- f. Financing: Delivery of Highly Confidential Letter from lending institution
- g. No Other Representations

7. Representations and Warranties of AEG (for limited purposes only)

- a. Organization
- b. Authority

8. Representations and Warranties of UI (for limited purposes only)

- a. Organization
- b. Authority

9. Covenants

- a. Conduct of Seller Prior to the Closing – Seller will not take certain actions that could significantly alter the conduct of business of Seller or enter into certain agreements without Buyer's consent.
- b. Educational Matters – Seller will operate in a manner such that it retains its accreditation and overall status.

- c. Access to Information – Seller will continue to permit Buyer to conduct due diligence during the period between signing and closing.
- d. No Solicitation of Other Bids – Seller will not attempt to sell the assets to any other party, and will inform Buyer if it receives any unsolicited bids.
- e. Notice of Certain Events – Seller will notify Buyer if any material adverse events arise or if any actions are commenced against the Seller’s business.
- f. Employees and Employee Benefits – Buyer will offer employment to all Seller employees and agree to maintain salary and benefits for up to one year.
- g. Treatment of Foundations – Buyer is under no obligation to support the foundations currently supported by Seller.
- h. Confidentiality – Buyer will keep Seller’s information confidential through closing; post-Closing, Seller and its affiliates will keep confidential information about the business acquired by Buyer.
- i. Non-Disparagement; Non-Competition; Non-Solicitation – Seller and its affiliates agree to customary non-disparagement, non-compete and non-solicit obligations.
- j. Approvals and Consents – Seller and Buyer will endeavor to obtain all necessary consents and approvals to the transaction.
- k. R&W Insurance Policy – Buyer will seek to obtain a buy-side representation and warranty insurance policy, and Seller will cooperating in those efforts.
- l. Financing – Buyer will seek to obtain “committed” financing for the transaction.
- m. Financing Cooperation – Seller will assist Buyer in connection with obtaining bond financing or committed financing.
- n. Books and Records; Post-Closing Access – Buyer will retain books and records acquired in the transaction, and provide access to those documents to Seller for limited purposes.
- o. Closing Conditions – Buyer and Seller will use reasonable efforts to satisfy closing conditions.
- p. Public Announcements – Announcements will be coordinated between Buyer and Seller with joint announcements or individual announcements that have been pre-approved.
- q. Cooperation Regarding Tax Matters – Each party will file its own taxes and cooperate with the other party to provide any information necessary to those filings.
- r. Use of Name – Seller will stop using the University name after closing.
- s. Finalization of Ancillary Agreements – the parties will cooperate between signing and closing to finalize closing documents and related agreements.
- t. Pre-Closing Reorganization – Seller will undertake steps to ensure the assets related to the operation of the University currently held by certain affiliates are held by the Seller at closing.
- u. Application for Recognition of Tax-Exempt Status under Section 501(c)(3) of the Code – After signing, the parties will cooperate to apply for recognition of Buyer’s tax-exempt status.
- v. Further Assurances – After closing, the parties will cooperate with one another to ensure that the provisions of the purchase agreement are carried out.

10. Termination of the Agreement

- a. By mutual consent
- b. By Buyer if
 - i. R&W Policy not obtained per the terms of the agreement
 - ii. For breach, inaccuracy in or failure to perform – after required notice
 - iii. Buyer closing conditions have not been met unless caused by Buyer

- c. By Seller if
 - i. For breach, inaccuracy in or failure to perform – after required notice
 - ii. Seller closing conditions have not been met unless caused by Seller
 - iii. Failure of Buyer to complete the closing
11. Miscellaneous Terms

THE REGENTS OF THE UNIVERSITY OF IDAHO

A RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF IDAHO (A) AUTHORIZING CREATION OF NEWU, INC., AND (B) AUTHORIZING THE ACQUISITION BY NEWU, INC. OF SUBSTANTIALLY ALL OF THE ASSETS AND ASSUMPTION OF CERTAIN LIABILITIES OF THE UNIVERSITY OF PHOENIX, INC. AND RELATED TRANSACTIONS.

WHEREAS, The Regents of the University of Idaho (the “**University**”) is a state institution of higher learning and body corporate established pursuant to Chapter 28, Title 33, Idaho Code, and Section 10, Article IX, of the Idaho Constitution;

WHEREAS, there have been presented to the University a term sheet and other related summary documents, presentations, and materials (collectively, “**Term Sheet**”), which contemplate and collectively describe the material terms and conditions of a negotiated Asset Purchase Agreement (“**APA**”), by and among NewU, Inc., an Idaho nonprofit corporation (“**Buyer**”), The University of Phoenix, Inc., an Arizona corporation (“**Seller**”), and the University, pursuant to which Buyer will acquire from Seller substantially all of the assets and assume certain liabilities of Seller, subject and pursuant to the terms and conditions described in the Term Sheet (which will be documented in the signed APA) and related documents containing definitive terms (the “**Transaction**”);

WHEREAS, every other document, agreement and instrument contemplated by the Term Sheet to be documented in the APA, including any ancillary documents contemplated by the Transaction are collectively referred to as the “**Transaction Documents**”;

WHEREAS, the Transaction contemplates that Buyer’s obligations to consummate the Transaction are conditioned upon Buyer’s ability to obtain, subject to the terms and conditions described in the Term Sheet, to be documented in the APA, financing sufficient to consummate the Transaction and to that end, the University has engaged in negotiations with certain financial institutions (collectively the “**Financing Sources**”) to provide a proposed debt financing structure for the Transaction, which includes long-term financing in the form of municipal securities consisting of either tax-exempt securities or taxable securities or both that will be affordable to the Buyer and marketable at a time the Transaction is able to be successfully consummated (the “**Permanent Debt Financing**”);

WHEREAS, the **Transaction** also contemplates that Buyer will, subject to the terms and conditions described in the Term Sheet, to be documented in the APA, consider obtaining sufficient alternate interim committed financing to be available to consummate the Transaction until such time as the Permanent Debt Financing can be successfully marketed (the “**Committed Financing**”, and collectively with the Permanent Debt Financing, the “**Financing**”) and to that end, the University has engaged in negotiations with the Financing Sources to structure the Committed Financing and obtain highly confident letters with respect to the same;

WHEREAS, as a condition of the Financing, the University may have certain obligations and commitments necessary to allow Buyer to secure the Financing necessary to effectuate the Transaction as described in the Term Sheet (collectively, the “**University Financial Commitments**”);

WHEREAS, the Financing contemplates the preparation and execution by Buyer and the University, with respect to the University Financial Commitments, as may be applicable, certain documents, agreements, and instruments containing definitive terms as necessary to effectuate the Financing (collectively, the “**Financing Documents**”);

WHEREAS, Seller is among the largest and most well-known providers of online education, offering degree granting programs at the associate, bachelors, masters and doctoral level, as well as over forty certificate programs in nine fields of study;

WHEREAS, as part of the University’s strategic plan, the University for some time has sought access to a large scale platform for online education in order to, among other things, (i) increase and diversify the University’s course offerings in scope and availability, (ii) provide greater educational access to first generation college students and rural and sparsely populated service areas in the State of Idaho, (iii) protect against catastrophic interruptions to its traditional on-campus learning environment; and (iv) enhance the availability of online learning in conjunction with other education institutions in the State of Idaho under the supervision of the Idaho State Board of Education and Regents of the University of Idaho;

WHEREAS, the University believes that scaling a sufficient online presence organically would consume considerable time and might ultimately not be achievable over a meaningful time horizon to be competitive in the online marketplace, compared to the opportunity to purchase a full-functioning and free-standing existing online presence;

WHEREAS, the University believes converting Seller’s operations to a nonprofit status and bringing the resources and reputation of a public, land-grant institution to the online environment serves a public purpose and is in the best interests of the University and the state of Idaho;

WHEREAS, the University desires to incorporate the Buyer and act as the sole member of Buyer for the purpose of empowering the Buyer to enter into the Transaction and operate the business of Seller separately from, but in affiliation with, the University upon successful consummation of the Transaction;

WHEREAS, the University desires to constitute and otherwise form the Buyer so that it may enter into the APA and perform the transactions contemplated thereby;

WHEREAS, the University desires to ratify the incorporation of Buyer as a nonprofit corporation in the state of Idaho pursuant to the Articles of Incorporation (“**Articles**”) and Bylaws of Buyer in substantially the same form as presented to the University;

WHEREAS, the University desires to authorize the Transaction, as described in the Term Sheet to be documented in the APA, to the extent of the specific obligations applicable to the University as contemplated by the Transaction;

WHEREAS, the University desires to authorize the Financing to the extent of the specific University Financial Commitments on terms no less favorable than those contemplated by the APA or the Term Sheet;

WHEREAS, as a legal matter, the formation of the Buyer as a separate corporation strives to insulate the University from the liabilities of the Buyer; however, from a financial reporting standpoint and the expected evaluation by the rating agencies that rate the University's bonded indebtedness, the consummation of the Financing is expected to have immediate effects on the University's balance sheet and credit ratings.

WHEREAS, the University has solicited and obtained an analysis of these financial effects from its financial advisor, Public Financial Management, as presented in the Term Sheet, that analyzes these effects and the time horizon over which the effects are expected to diminish based upon the expected future performance of the Buyer;

WHEREAS, the University believes that the Transaction presents a strategic opportunity to the University that justifies near term collateral financial impacts to the University; and

WHEREAS, in compensation to the University for approving the Transaction and providing the potential University Financial Commitments and the consequent effects of the Transaction and Financing on the University, the University will be entitled to receive grants or the like from the Buyer derived from a portion of the revenues and income of the Buyer in the manner described in the Term Sheet, recognizing that the exact amount of such grants (or the like) will be dependent upon the eventual covenants applicable to the Buyer under the Financing and the financial performance of the Buyer going forward.

NOW, THEREFORE, BE IT:

Incorporation of NewU, Inc.

RESOLVED, that it is in the best interests of the University and in furtherance of an Idaho public purpose to authorize the incorporation of NewU, Inc., an Idaho nonprofit corporation, in substantial conformance with the Articles and Bylaws as presented to the University, for the purpose of operating and acquiring substantially all of the assets and assuming certain liabilities of Seller as contemplated by the Transaction.

RESOLVED FURTHER, that the actions of Kent Nelson, in his capacity as acting General Counsel for the University, to incorporate the Buyer, to execute the Articles, in substantially the form presented to the University, and to cause the same to be filed with the appropriate agencies of the State of Idaho are hereby ratified, confirmed and approved in all respects.

Approval of APA

RESOLVED FURTHER, that the terms and provisions of the Transaction, as described in the Term Sheet, to be documented in the APA and other Transaction Documents, all as described by the Term Sheet, is hereby found to be in the best interests of the University and are hereby approved and adopted in all respects.

RESOLVED FURTHER, that Scott Green, in his capacity as the President of the University, and Brian Foisy, in his capacity as the Vice President for Finance and Administration of the University (each an “**Authorized Person**”) be, and each of them hereby is, authorized and empowered to execute and deliver the APA and all Transaction Documents as applicable to the University, upon certification by legal counsel to the University that the terms of the APA are consistent in all material respects with (or no less favorable than those described in) the Term Sheet, for and on behalf of the University and to cause the University to perform its obligations thereunder, with such additions, deletions, or changes therein (including, without limitation, any additions, deletions, or changes to any schedules or exhibits thereto) as the Authorized Person executing the same shall approve (the execution and delivery thereof by such Authorized Person to be conclusive evidence of the approval of any such additions, deletions, or changes).

Approval of Financing

RESOLVED FURTHER, that the Financing is in the best interests of the University and in furtherance of an Idaho public purpose, and to the extent of obligations of the University that are provided for or that may arise thereunder, including the University Financial Commitments, are hereby approved and adopted in all respects, provided the same substantially conform with (or are not less favorable than) the terms as described in the Term Sheet.

RESOLVED FURTHER, that each of the Authorized Persons be, and each of them hereby is, authorized and empowered to execute and deliver the Financing Documents on behalf of the University and to cause the University to perform its obligations thereunder (including the University Financial Commitments) with such additions, deletions, or changes therein (including, without limitation, any additions, deletions, or changes to any schedules or exhibits thereto) as the Authorized Person executing the same shall approve (the execution and delivery thereof by such Authorized Person to be conclusive evidence of the approval of any such additions, deletions, or changes).

RESOLVED FURTHER, that the University be, and hereby is, authorized and empowered to perform all of its obligations under and as required to effectuate the Financing.

Omnibus Resolutions

RESOLVED FURTHER, that each of the Authorized Persons be, and each of them hereby is, authorized, directed and empowered to execute and deliver all such other documents, instruments, certificates, filings and other agreements and to do and perform all such other acts as may be required to consummate the transactions contemplated by the **Transaction**, including delegating any such authority to any other duly acting officer of the University, and from time-to-time to take any and all action to make, execute, verify and file all applications, certificates, documents, regulatory filings, or other instruments and to take any and all such further and other action in connection with the resolutions herein above adopted as such Authorized Person deems necessary, advisable, or proper to effectuate the intent and purposes of such resolutions, the taking of such actions to be conclusive evidence that the same have been authorized and approved by the University.

Effective Date

RESOLVED FURTHER, that this resolution shall take effect and be in force immediately upon its adoption.

ADOPTED: May 18, 2023

THE REGENTS OF THE UNIVERSITY OF
IDAHO

President

ATTEST:

Secretary