

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