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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF SAN FRANCISCO**

16 ERIC BOTCHER, and SAMUEL D.  
17 GALIZIA, individually and on behalf of all  
18 others similarly situated.

19 Plaintiffs,

20 v.

21 MAKE SCHOOL PBC f/k/a MAKE SCHOOL  
22 INC., MAKE SCHOOL ABC, LLC, MAKE  
23 SCHOOL ISA SPV, LLC, VEMO  
24 EDUCATION, INC., and DOES 1 through 10,

25 Defendants.

Case No. CGC-21-592710

**THIRD AMENDED CLASS  
ACTION COMPLAINT FOR**

1. **DECLARATORY AND  
INJUNCTIVE RELIEF**
2. **VIOLATION OF  
CALIFORNIA BUSINESS &  
PROFESSIONS CODE § 17200**
3. **VIOLATION OF  
CALIFORNIA BUSINESS  
AND PROFESSIONS  
CODE § 17500**
4. **VIOLATION OF CAL. CIV.  
CODE §§ 1788-1788.3**
5. **VIOLATION OF CAL. CIV.  
CODE §§ 1788.101 et. seq.**
6. **UNJUST ENRICHMENT**

**JURY TRIAL DEMANDED**

**ELECTRONICALLY  
FILED**  
*Superior Court of California,  
County of San Francisco*

**08/21/2023**  
**Clerk of the Court**  
BY: WILLIAM TRUPEK  
Deputy Clerk

1 Plaintiffs ERIC BOTCHER and SAMUEL D. GALIZIA, by and through their attorneys  
2 and on behalf of themselves and all others similarly situated, hereby submits this Class Action  
3 Complaint against Defendants MAKE SCHOOL PBC f/k/a MAKE SCHOOL, INC., MAKE  
4 SCHOOL ABC, LLC, MAKE SCHOOL ISA SPV, LLC, VEMO EDUCATION, INC., and  
5 DOES 1 through 10, and allege as follows:

6 **PRELIMINARY STATEMENT**

7 1. Plaintiffs are former students of Defendant Make School, Inc. (“Make School”), a  
8 private start-up computer science college in San Francisco, California. Plaintiffs attended Make  
9 School between 2017 and 2019.

10 2. During this time, Make School aggressively marketed and promoted Defendant  
11 Vemo Education Inc.’s income share agreements, or ISAs, as an alternative to traditional student  
12 loans. At its core, an ISAs is a consumer financial product in which the borrower is obligated to  
13 pay a percentage of his or her future income in exchange for not having to pay tuition up front.  
14 ISA providers have tried to evade regulatory oversight by claiming that ISAs are not loans or  
15 credit, but that claim has been debunked by Federal and State regulators.

16 3. In marketing and promoting its ISA tuition model, Make School promoted the  
17 Vemo ISA agreements as cost-efficient and beneficial for students. But the ISAs offered to  
18 Make School students, including the Plaintiffs, were predatory, risky, and exorbitantly  
19 expensive. To induce students to sign ISAs, Make School and Vemo concealed and  
20 misrepresented the actual long-term cost of those agreements, which, if used to finance the entire  
21 two-year program plus living expenses, could cost over a quarter of a million dollars, or four  
22 times or more than the purported market rate of the educational services provided over just two  
23 years. Make School also misrepresented and concealed the nature of its financial interest in  
24 students’ success, including by falsely representing that Make School’s “incentives” were  
25 aligned with the students because it only got paid after students found employment and got paid.  
26 The truth is, Make School’s incentive was to sign as many students up for ISAs as possible so  
27 that it could package and sell those ISAs to investors and take out loans secured by the ISAs to  
28

1 fund operations.

2 4. Make School further concealed the fact that up until July of 2018, it was an  
3 unaccredited institution without approval to operate in the State pursuant to Education  
4 Code § 94886. As such, any agreement entered into prior to that date is void and unenforceable.  
5 *Id.* § 94917. California’s regulator of private post-secondary education in May of 2018 ordered  
6 Make School to cease operating and provide a refund to students who had enrolled at Make  
7 School prior to Make School receiving approval to operate. Make School disregarded that order  
8 and never cancelled the ISAs of students who attended Make School while Make School was  
9 operating illegally. Instead, Vemo, as the purported servicer of the ISA agreements, has  
10 attempted to and will continue attempting to collect 25% or more of students’ pre-tax income  
11 under ISAs signed before Make School had approval to operate. In many instances, Vemo is  
12 attempting to collect over \$3,000 per month from students, which is more than their monthly rent  
13 or mortgage. Even with a full-time job, many students are struggling to pay for basic necessities.

14 5. Once Make School did come into compliance and obtain approval to operate in  
15 the State, it only held that approval for approximately one year. In July of 2019, Make School  
16 surrendered or rescind its BPPE approval. Starting in July of 2019, and continuing through 2020  
17 and 2021, Make School continued to operate illegally in the state and push expensive ISA  
18 agreements on students without fully disclosing the true cost of those agreements. Make School  
19 contends that it did not need BPPE approval because it entered into an “incubation relationship”  
20 with Dominican University of California, an accredited non-profit institution. But as set forth  
21 below, documents received in this litigation from Dominican and the BPPE demonstrate that  
22 Make School was required to, but did not, keep its BPPE approval to operate while it had an  
23 incubation relationship with Dominican. As such, any agreement entered into after Make School  
24 rescinded its BPPE approval is void and unenforceable. *Id.* § 94917.

25 6. The Plaintiff Sam Galizia and members of the putative class who signed ISAs  
26 while the school did not have approval to operate in the State seeks, among other things, (i) a  
27 declaration that any ISAs entered into prior to Make School receiving approval to operate are  
28



1 company with its principal place of business in Boston, Massachusetts. MAKE SCHOOL ABC,  
2 LLC was formed in June of 2021 for the sole purpose of being the assignee to receive all assets  
3 and liabilities from MAKE SCHOOL, INC. for the benefit of Make School’s creditors pursuant  
4 to California law. Plaintiffs are informed and believe, and thereon allege, that all of Make  
5 School’s ISA contracts are owned by MAKE SCHOOL ABC, INC. through its wholly-owned  
6 subsidiary, Defendant MAKE SCHOOL ISA SPV, LLC.

7 11. Plaintiffs’ claims are asserted against Defendants MAKE SCHOOL ABC, LLC  
8 and/or MAKE SCHOOL ISA SPV, LLC pursuant to the FTC holder rule and related California  
9 law, which preserves Plaintiffs’ right to assert all available claims and defenses against the  
10 holder of the ISAs even if those contracts are assigned to a third party.

11 12. Defendants sued herein as DOES 1-10 are individuals or corporations who may  
12 own all or a portion of Plaintiffs’ ISAs and/or any other ISA used to finance Make School’s  
13 program.

14  
15 **The Plaintiffs**

16 13. Plaintiff Samuel D. Galizia is an individual currently residing in Los Angeles  
17 County, California. Galizia attended Make School from September 2017 to November 2019, and  
18 during that time he lived in San Francisco County, California. Galizia withdrew from Make  
19 School after one year because they were not provided with the educational services promised  
20 and/or the program was too expensive and not necessary for them to become gainfully employed.  
21 Galizia signed five ISAs with Make School—two dated August 30, 2017, one dated December 1,  
22 2017, and two dated August 17, 2018.

23 14. Plaintiff Eric Botcher is an individual currently residing in Sacramento County,  
24 California. Mr. Botcher attended Make School for one year, beginning in August of 2018, and  
25 during that time he lived in Alameda County, California. Mr. Botcher withdrew from Make  
26 School after one year because he was not provided with the educational services promised and/or  
27 the program was too expensive and not necessary for him to become gainfully employed. Mr.

1 Botcher signed three ISAs with Make School dated August 17, 2018, August 19, 2018, and April  
2 26, 2019. Mr. Botcher is a military veteran, serving in the United States Army for approximately  
3 four years.

#### 4 JURISDICTION AND VENUE

5 15. This Court has jurisdiction over Plaintiffs' claims pursuant to California Code of  
6 Civil Procedure section 410.10 and 410.40.

7 16. Venue is proper in this judicial district pursuant to California Code of Civil  
8 Procedure section 395(a) because a substantial part of the events giving rise to the claims herein  
9 occurred in San Francisco County and because Defendant Make School has or had its principal  
10 place of business in San Francisco County.

#### 11 FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

##### 12 **A. Make School, Inc.**

13 17. At all relevant times, Make School was an experimental, venture-backed, for-  
14 profit startup college in San Francisco, California.

15 18. Make School was originally founded in 2012 as "MakeGamesWithUS" by co-  
16 founders Jeremy Rossmann and Ashutosh Desai. In 2014, the company changed its mission and  
17 also changed its name to Make School. In promotional videos, Make School has been referred to  
18 as an "anti-College" or as a "college replacement for founders and developers."<sup>1</sup>

19 19. For over four years following Make School's inception (from 2014 until mid-  
20 2018), Make School operated without any accreditation from a regional accrediting institution.

21 20. In addition, from 2014 to mid-2018, Make School operated without the required  
22 approval to operate from the California Bureau of Private Postsecondary Education (the "BPPE")  
23 in violation of the California Private Postsecondary Education Act of 2009. *See* Cal. Ed. Code §  
24 94886 (a postsecondary institution "shall not open, conduct, or do business as a private  
25 postsecondary educational institution in [California] without obtaining approval to operate.")

26 21. Make School briefly obtained BPPE approval to operate from July 13, 2018 to  
27

28 <sup>1</sup> <https://www.youtube.com/watch?v=6rT00QXqZak> (posted December 3, 2015).

1 July 19, 2019, when it voluntarily rescinded its BPPE approval to operate.

2 22. Make School offered a two-year Bachelors Degree in applied computer science  
3 that emphasized “practical computer science skills” (such as building apps) as opposed to more  
4 theoretical concepts taught in traditional Computer Science curriculums found at four-year  
5 universities. According to one news article, Make School was “a combination of a short-term  
6 coding bootcamp and a traditional four-year university.”<sup>2</sup>

7 **B. Make School’s ISA Tuition Model**

8 23. While Make School was operating as an unaccredited and unapproved institution,  
9 Make School charged students between \$50,000 and \$70,000 in tuition depending on the  
10 academic year enrolled. That is more than the average in-state tuition costs for obtaining a four-  
11 year degree from a University of California (“UC”) institution or from a California State  
12 University during the same time period. Per year, Make School’s tuition costs exceed many  
13 private university tuition rates, including Stanford University’s prestigious undergraduate  
14 program.

15 24. One of the main differences between Make School and other colleges is the way  
16 in which Make School collects tuition. Between 2016 and 2021, Make School, in partnership  
17 with Vemo, encouraged students to pay for tuition and living expenses with educational income  
18 share agreements, or “ISAs.”

19 25. At their core, ISAs are consumer financial products in which students promise to  
20 pay a percentage of their future income in exchange for money to pay their tuition and/or living  
21 expenses.

22 26. While proponents of ISAs tout them as “innovative,” in substance they are no  
23 different than traditional student loan products. Like with a traditional loan, a student’s account  
24 is credited, and no money is due up front for tuition or fees. In exchange, the student promises to  
25 repay the tuition at a later time (*i.e.*, after graduation or after leaving the program). Under an  
26

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27 <sup>2</sup> [https://www.bizjournals.com/sanfrancisco/news/2018/11/27/make-school-dominican-accredited-  
28 bachelors-degrees.html](https://www.bizjournals.com/sanfrancisco/news/2018/11/27/make-school-dominican-accredited-bachelors-degrees.html) (Nov. 27, 2018).

1 ISA, students repay the loan by either:

2 a. paying a fixed “payment cap” that is higher than the sum the student received  
3 (sometimes 2-4 times as much in the case of Make School’s ISAs), or

4 b. making payments, calculated according to a formula in the agreement that is  
5 based on the student’s income, over a period determined in the agreement.

6 27. Make School and Vemo have tried to evade regulatory oversight by claiming that  
7 ISAs are not loans or credit, but that claim is false and misleading. Substantively, ISAs are no  
8 different from traditional student loans in which a student’s account is credited and no money is  
9 due up front for tuition or fees and in exchange, the student promises to repay the tuition at a  
10 later time (*i.e.*, after graduation or after leaving the program). In fact, since the filing of the  
11 original complaint in this action, both the California Department of Financial Protection and  
12 Innovation (“DFPI”) and the Consumer Financial Protection Bureau (“CFPB”) have found that  
13 ISAs are loans and/or debt instruments.<sup>3</sup>

14 28. Make School partnered with Defendant Vemo to design and implement the ISA  
15 program, which could be used to fund not only tuition, but also living expenses so that students  
16 could afford to live in San Francisco while attending school full-time. In one informational  
17 session in the Spring of 2017 on income share agreements, Make School co-founder Jeremy  
18 Rossmann, touted that Make School and Vemo were “literally the world pioneers in income  
19 share agreements” and that Make School “invented some of this stuff [*i.e.*, income share  
20 agreements] together with Vemo.”

21 29. Vemo is a for-profit company that, designs, implements, and manages ISA  
22 programs for its partners. Plaintiffs are informed and believe, and thereon allege, that the ISA  
23 contracts are primarily drafted by Vemo.

24 30. Plaintiffs are informed and believe, and thereon allege, that postsecondary  
25

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26 <sup>3</sup> *In the Matter of Student Loan Servicing Act License Application of Meratas Inc.*, NMLS No. 2120180, Consent  
27 Order at ¶ M (Ca. Dep’t of Fin. Prot. And Innovation Aug. 5, 2021), available at: [https://dfpi.ca.gov/wp-](https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/08/Meratas-Consent-Order.pdf)  
28 [content/uploads/sites/337/2021/08/Meratas-Consent-Order.pdf](https://dfpi.ca.gov/wp-content/uploads/sites/337/2021/08/Meratas-Consent-Order.pdf) (last visited 1/24/22); *In the Matter of Better Future Forward, Inc., et. al.*, No. 2021-CFPB-0005, Consent Order at ¶ 23 (Sept. 7, 2021) (finding that “ISAs are loans and do create debt.”).



1 educational institutions like Make School that participate in Vemo's ISA program agree to  
2 market and sell the ISA contracts to students using Vemo marketing materials.

3 31. After a student enters into an ISA contract, the educational institution pays a fee  
4 to Vemo in exchange for Vemo (1) collecting money from the student after the student  
5 completes or leaves the computer science program, and (2) returning some portion of that money  
6 to the institution and/or investors who own some portion of Make School's ISA pool.

7 32. While Make School's ISAs avoid terminology associated with credit and loans  
8 (such as "principal" and "interest") and claim not to be "credit" or "loans," they are just another  
9 type of student loan or credit agreement. The only difference between traditional income-based  
10 repayment on a conventional student loan and Make School's ISAs is that the cost of Make  
11 School's ISA program is exorbitant and Make School used deceptive rhetoric and marketing that  
12 obscured the true nature of these agreements, as set forth in more detail below.

13  
14 **C. 2015-2018: Make School Induces Plaintiffs to Sign Multiple Income Share  
15 Agreements Without Disclosing the True Nature of Those Agreements**

16 33. Around the time Plaintiffs were considering attending Make School, their  
17 payment options were either to (1) pay \$30,000 to \$40,000 for year one, and \$20,000 to \$30,000  
18 for year two depending on the year enrolled, for a total of \$50,000 to \$70,000 in tuition, plus  
19 living expenses while attending school full-time, or (2) enter into ISA agreements with Make  
20 School to finance that tuition and living expenses.

21 34. During that time, Make School aggressively marketed and promoted Vemo's ISA  
22 agreements as superior to traditional tuition and/or student loan models.

23 35. The ISAs offered to Make School students were primarily marketed to  
24 undergraduate students, including those in their late teens and early twenties who have not had  
25 significant experience with financial products, much less the complex shopping involved in  
26 selecting between ISAs and other options to finance their education. Moreover, compared to the  
27 technology industry generally, prospective, former, and current Make School students are  
28 disproportionately from non-affluent families who lack the resources to pay out-of-pocket for a

1 Make School program or for a traditional four-year university. According to Make School’s own  
2 promotional statements, 40% of students were underrepresented minority students and 50%  
3 come from low-income families.<sup>4</sup>

4 36. In marketing its ISA model, Make School used marketing tools that were  
5 endorsed and promoted by Vemo, and used deceptive rhetoric and marketing that concealed the  
6 nature and cumulative cost of those agreements, as described below.

7 *Make School and Vemo’s Marketing of the ISA Agreements as Not Debt or Credit*

8 37. In conjunction with Vemo, Make School falsely claimed that its ISA agreements  
9 were not loans or credit. For example, in one widely-disseminated promotional video titled  
10 “Make School — The Future of Higher Education,” a Make School spokesperson made the  
11 following statement:

12  
13 “There’s no grading you here on standardized tests. There are no auditoriums  
14 with 500 to 1 student to professor ratios, **and there’s no student debt!** Instead  
we bring together bright students for a transformative college experience in the  
epicenter of the technology industry.”

15 38. This statement and statements like it that were repeatedly made to prospective  
16 students (and their parents), imply falsely that ISAs are not student loans. That claim is  
17 demonstrably false. In substance, ISAs are no different from traditional student loans in which  
18 the student pays little to nothing up front and in exchange, the student promises to repay the  
19 tuition after they graduate or withdraw from the program.

20 39. Federal and State regulators have affirmed that ISAs are student loans. The  
21 California DFPI in the Fall of 2021 issued a consent order with one ISA servicer, like Defendant  
22 Vemo, finding that ISAs used to finance postsecondary education are “loans” for purposes of  
23 California’s Student Loan Servicing Act. The CFPB recently made similar findings about ISAs  
24 under Federal law. On September 7, 2021, the CFPB issued a consent order with Better Future  
25 Forward, Inc., a company that (like Vemo) provides students with ISAs to finance post-  
26 secondary education. *In the Matter of Better Future Forward, Inc.*, No. 2021-CFPB-0005,

27  
28 <sup>4</sup> <https://www.ycombinator.com/companies/make-school>.

1 Consent Order at ¶ 1 (Sept. 7, 2021). In no uncertain terms, the CFPB found that “ISAs are  
2 loans and do create debt.” *Id.* ¶ 23.

3 40. Make School’s representations that the ISA program was a “debt free” option that  
4 was materially different than a student loan constitute false advertising, and unlawful, unfair, and  
5 fraudulent business acts or practices under California law.

6 *Make School and Vemo’s Marketing of the ISA Agreements as Superior to Traditional Loans*

7 41. Make School, in conjunction with Vemo, marketed the ISA tuition model as  
8 superior to so-called “traditional colleges,” and in doing so, misled students to believe that  
9 financing the Make School program through ISA agreements would leave them better off  
10 financially and in less debt compared to students who chose to attend a four-year university. As  
11 set forth below, those statements grossly misrepresented (a) the actual total cost of the ISAs  
12 versus conventional loans, (b) the proportion of their income students would pay compared to  
13 other income-based repayment programs available with traditional loans, and (c) the deferment,  
14 forbearance, forgiveness, and enforcement options available for traditional loans versus the ISAs.

15 42. In 2016 and 2017, Make School claimed that students could finance their tuition  
16 by pledging 25% of their future earnings for three years and six months (42 months). For  
17 students who wished to borrow living expenses while they attended school full-time, those  
18 students could “obtain an extension” of their ISA (*i.e.*, take out an additional ISA) to receive a  
19 living stipend of \$1,500 per month. In total, Make School falsely claimed that students could  
20 expect to pay \$90,000 in tuition if they fully financed the program with a ISA.<sup>5</sup>

21  
22  
23  
24  
25  
26 <sup>5</sup><https://web.archive.org/web/20161108192456/https://www.makeschool.com/admissions#tuition> (Nov.  
27 8, 2016); [https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-  
college/admissions](https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-college/admissions) (June 6, 2017).

1  
2  
3 Make School is a pioneer in the Income-Based Repayment (IBR) tuition model for higher  
4 education. Income-Based Repayment Tuition means that students can pay their tuition to the  
5 Product Academy by pledging a percentage of their future earnings. Make School may offer a  
6 student Full, Partial, or Half IBR tuition.

Payment Option	Up-Front Tuition	% of Pre-Tax Salary	Months of IBR
Full IBR	\$0/yr	25%	3 Years + 6 Months
Partial IBR (US)	\$7,500/yr	25%	2 Years + 6 Months
Half IBR	\$15,000/yr	25%	1 Year + 6 Months

10  
11 **Income share agreement table (2017)**

12 Move slider to see ISA range



- 13
- 14
- 15 \$0 upfront tuition (paid in quarterly installments over two years)
- 16 42 months of tuition payback at 25% of gross salary (6 month internship + 3 years of work)
- 17 \$3,300 average monthly take home salary (after taxes and tuition)
- 18 \$90,000 expected total tuition paid

19 43. In 2018, Make School began advertising a slightly different but no better ISA  
20 program. Make School advertised on its website in 2018 that students could pay their year one  
21 tuition in full by pledging 20% of their future earnings for 36 months and pay their year two  
22 tuition by pledging 20% of their future earnings for an additional 24 months. For students who  
23 wished to borrow living expenses while they attended school full-time, those students could  
24 “stack” additional ISAs onto their tuition ISAs, which would provide a living stipend of \$1,500  
25 per month in exchange for the student pledging and additional 5-7% of his or her future earned  
26

1 income after graduation.<sup>6</sup>

2 44. In one widely disseminated promotional video created in 2018, Make School’s  
3 founder Jeremy Rossmann falsely stated that tuition for Make School’s program was “70k up  
4 front if you choose that option [i.e., paying up front out of pocket], *or about 100k if you choose*  
5 *the income share option, and that’s for a full bachelors.*”<sup>7</sup>

6 45. These statements are false. Make School and Vemo failed to disclose that four or  
7 more ISAs would need to be signed to fully fund the program for two years—and *each* of those  
8 ISAs had maximum payment obligations or “payment caps” between \$40,500 and \$100,000 on  
9 average. As set forth in the chart below, depending on the year enrolled, tuition alone could cost  
10 students between \$140,500 and \$175,000, and room and board could cost an additional \$81,000  
11 to \$108,000, depending on the students’ future income. Accordingly, the potential liability under  
12 a typical Make School/Vemo ISA package far exceeds any tuition and/or room and board costs  
13 that could conceivably be paid for comparable four-year universities offering undergraduate  
14 degrees (or any graduate program for that matter). The actual cost of financing the Make School  
15 program with ISAs for two years could potentially cost students over a quarter of a million  
16 dollars, which equals about four times the purported market rate for those “training services.” In  
17 many instances, Plaintiffs’ income share obligation exceeds \$3,000 per month and is more than  
18 their monthly rent or mortgage.<sup>8</sup>

19  
20  
21  
22 <sup>6</sup>[https://web.archive.org/web/20180709042552if\\_/https://www.makeschool.com/product-college/tuition-and-aid](https://web.archive.org/web/20180709042552if_/https://www.makeschool.com/product-college/tuition-and-aid) (July 6, 2018).

23 <sup>7</sup> [facebook.com/KOMONews/videos/is-this-silicon-valley-colleges-pay-nothing-until-you-get-a-job-tuition-plan-the/2254301184845481](https://www.facebook.com/KOMONews/videos/is-this-silicon-valley-colleges-pay-nothing-until-you-get-a-job-tuition-plan-the/2254301184845481) (Posted December 12, 2018).

24  
25 <sup>8</sup> This chart reflects the total potential liability for students financing Make School’s program with four  
26 ISA contracts (a tuition and stipend ISA for year one, and a tuition and ISA stipend for year two). Some  
27 students needed to take out a fifth ISA for living expenses if they were unable to complete the program in  
28 two years, which came with its own payment cap that added on to the other payment caps, resulting in a  
greater potential liability over a longer period of time.

Year first enrolled at Make School	Actual funds credited to student's account for tuition over two-year program	Average funds provided for rent and living expenses over the two-year program	Maximum potential liability under Tuition ISAs (i.e., "payment cap")	Maximum potential liability under living stipend ISAs (i.e., "payment cap")	Total potential liability to students financing program through ISAs
2016	\$50,000	\$27,000	\$140,500	\$81,000	<b>\$221,000</b>
2017	\$60,000	\$36,000	\$160,000	\$108,000	<b>\$268,000</b>
2018	\$70,000	\$31,500	\$175,000	\$94,500	<b>\$269,500</b>

46. Moreover, and to make matters worse, Make School's statements concerning the term of its ISA program (*i.e.*, the number of months students would have to make income share payments) were also false and misleading because they incorrectly imply that a student's income-share obligations under the ISAs would cease within forty-two to sixty months depending on the year signed and whether the student also signed an ISA for living expenses, or when the student hit the payment cap (summarized above), whichever came first.

47. In reality, one tuition ISA was required each year, and one or more living stipend ISAs would be needed each year to cover living expenses while attending school full-time—and *each and every* ISA could be extended up to 36 additional months. The ISAs were paid one after the other in the case of students who first enrolled in 2016 and 2017, or, in the case of students who first enrolled in 2018 (and a small handful of students who enrolled in the winter of 2017-2018), in sets of two (year one ISAs, then year two ISAs). The practical result was that students would remain obligated to share income for a significantly longer period of time than advertised—sometimes for ten years or more—thereby ensuring that Make School and Vemo would receive an income share that was as close as possible to the exorbitant payment caps, outlined above, many of which were not disclosed to students before enrolling in the program.

48. In addition, from 2016 to 2019, Make School on its website and at promotional events stated that Make School graduates would, on average, "start working 2 years earlier than typical computer science undergrads," and that as a result, Make School students could expect to

1 earn \$190,000 (pre-tax) immediately following graduation, while their peers would still be in  
2 college and “paying up to \$80,000 in tuition for their junior and senior years.” An example of  
3 this statement, which appeared on Make School’s website in 2018 and 2019 is reproduced  
4 below.<sup>9</sup> Substantially similar statements were made to Plaintiffs at promotional events prior to  
5 their enrollment.

## 6 7 COMPARING TO TRADITIONAL COLLEGES

8 Our graduates start their careers with an average salary of \$95k/year, on par with graduates  
9 from top-tier programs and far ahead of the national average of around \$66,000 .

10 Our graduates start working 2 years earlier than typical computer science undergrads. While  
11 their peers are paying up to \$80,000 in tuition for their junior and senior years of college, our  
12 typical graduate earns \$190,000 pre-tax.

13  
14 49. These statements (endorsed and promoted by Vemo) concerning the estimated  
15 debt of a “traditional” student versus the projected income of a Make School student are false  
16 and misleading because the statements compare apples to oranges. In other words, the projected  
17 (and inflated) *debt* of a so-called “traditional” student is compared to the projected *income* of a  
18 Make School graduate. In doing so, Make School concealed the true cost of Make School’s two-  
19 year program and potential debt that Make School students would have upon leaving the  
20 program as compared to the debt of a traditional four-year university student.

21 50. In addition, these statements are false and misleading because they inflate the  
22 amount of debt and monthly payment obligation that students attending traditional four-year  
23 universities have on average. The statements do not disclose that federal financial aid,  
24 scholarships, grants, and/or private loans are frequently made available to those students, all of  
25

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26 <sup>9</sup> [https://web.archive.org/web/20190403055150/https://www.makeschool.com/computer-](https://web.archive.org/web/20190403055150/https://www.makeschool.com/computer-science/tuition-and-aid)  
27 [science/tuition-and-aid](https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-college/admissions#tuition) (April 3, 2019); *see also*  
28 [https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-](https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-college/admissions#tuition)  
[college/admissions#tuition](https://web.archive.org/web/20170606203733/https://www.makeschool.com/product-college/admissions#tuition) (June 6, 2017).

1 which have significantly more favorable pay-back terms than Make School and Vemo’s ISAs.

2 51. For example, Federal Loans and a growing number of private loans<sup>10</sup> have  
3 repayment plans in which the students’ monthly payment obligation is calculated as a percentage  
4 of his or her income. The U.S. Department of Education, for example, offers “Pay As You Earn”  
5 and “Revised Pay as You Earn” payment plans under which students’ monthly payment amount  
6 is calculated as 10% of the students’ *discretionary* income—that is, income in excess of 150% of  
7 the HHS Poverty guidelines based on family size. Make School’s ISA program, in contrast,  
8 calculates students’ monthly payment obligation as 25% of the students’ *pre-tax* income,  
9 resulting in a significantly higher monthly payment amount.

10 52. Moreover, unlike traditional student loans, the ISAs do not provide for deferment,  
11 forbearance, or forgiveness if, for example, the student experiences unexpected financial  
12 hardship due to a medical emergency, or a spouse losing a job, or for other reasons. The 25%  
13 income share is not adjusted based on family size or other financial obligations students may  
14 experience. Make School never disclosed these facts, and instead claimed falsely in 2017 that if  
15 students had a “real loan,” a private lender could “call the sheriff and come take all your stuff.”  
16 That statement is also false and misleading because personal property seizures are virtually non-  
17 existent as a remedy for non-payment of a student loan.

18  
19 *Make School’s False Promises Concerning Debt Waivers for Military Veterans*

20 53. In addition, Make School specifically targeted military veterans. Make School  
21 falsely advertised Make School as a soon-to-be Yellow Ribbon School. The Yellow Ribbon  
22 program is a provision in the Post-9/11 GI Bill that allows veterans to attend a private school for  
23 little or no out-of-pocket money. Make School promised military veterans that their student debt  
24 would be waived or dramatically reduced once Make School became a Yellow Ribbon school.

25  
26 <sup>10</sup> Joanna Pearl & Brian Shearer, *Credit by Any Other Name: How Federal Consumer Financial Laws*  
27 *Governs Income Share Agreements*, Student Borrower Protection Center (July 2020), at p. 9 and n.27  
28 (providing examples of traditional private student loan programs offering income-based-repayment options).



1           54. Plaintiffs are informed and believe that to this day, Make School never could and  
2 never did obtain Yellow Ribbon status.

3  
4 *Make School and Vemo's Failure to Provide Students with Any Meaningful Opportunity to Review their ISA Contracts*

5           55. Plaintiffs were not provided with an initial ISA contract to review and sign until  
6 after the student had already re-located to the San Francisco area to begin attending classes.

7           56. Upon signing an initial ISA for year one, Plaintiffs were never told what the  
8 actual terms of subsequent ISAs would be, including the payment cap of those future  
9 agreements. In some instances, students did not know that there would be subsequent ISAs at  
10 the time that they enrolled in Make School's program. It was not until after the student signed an  
11 initial ISA upon enrollment, and after the student had invested significant time and money  
12 participating in the program, they were asked to sign new ISAs on more than one instance.

13           57. Those agreements were presented without any meaningful opportunity to review  
14 them. In some instances, students (including the Plaintiffs named herein) were asked to sign  
15 ISAs the same day they received them or else they could not complete the program. Moreover,  
16 on occasion the multiple ISAs provided to students were internally inconsistent and led to absurd  
17 results.

18 *Make School's False and Misleading Statements Concerning its Interest in Students' Success*

19           58. Despite Make School's claims otherwise, the ISA program was not "financial aid"  
20 at all. It was an illegal and exploitative scheme designed to generate start-up funds that was  
21 targeted at low-income students who, through no fault of their own, did not have the up-front  
22 cash to pay for Make School's program.

23           59. Make School presented its ISA program as innovative and the solution to the  
24 student debt crisis because it "align[ed] [Make School's] incentives with the outcome of [it's]  
25 students – [it was] successful if [the student is] successful."<sup>11</sup>

26 \_\_\_\_\_  
27 <sup>11</sup> [https://web.archive.org/web/20180709042552if\\_/https://www.makeschool.com/product-college/tuition-and-aid](https://web.archive.org/web/20180709042552if_/https://www.makeschool.com/product-college/tuition-and-aid) (July 2018).

1           60. Vemo likewise for years has promoted and continues to promote ISA programs as  
2 “[a] winning formula for colleges” because the program “align[s] institutional success with  
3 student outcomes.”<sup>12</sup>

4           61. For example, in January of 2019, Make School’s co-founder Jeremy Rossmann  
5 promoted Make School’s ISA tuition model on CBSN. He was asked the following question by  
6 the news anchor: “how on earth do[es] [Make School] make money if people don’t get good  
7 jobs?” Mr. Rossmann responded with “well we don’t, that’s the whole point. Students get good  
8 jobs, and therefore we make money. We’ve got students hired by Facebook and Apple, Google,  
9 a bunch of great companies . . . and [] its outcomes like those that pay the bills.”<sup>13</sup>

10           62. These marketing messages suggested (falsely) that Make School would only be  
11 “successful” (*i.e.*, receive money and remain a viable institution) if it properly prepared its  
12 students for rewarding and good paying jobs.

13           63. The truth is, Make School used its ISA pool as a way for Make School to generate  
14 start-up funds from investors and lenders long before students graduated. The actual incentive of  
15 Make School was to have as many students sign as many ISA contracts as possible so that Make  
16 School could (i) package and sell those ISAs to investors in exchange for cash up front, and (ii)  
17 borrow money from lenders backed by the ISAs themselves.

18           64. Make School did not disclose how it had been using the ISAs to receive start-up  
19 funds before students graduated until May 20, 2021, when it told current students participating in  
20 the ISA program that “[t]he ISA program relied heavily on investors purchasing the future  
21 payback of these loans in exchange for loaning Make School the money it needed to operate.”

22           65. Contrary to Make School’s representations otherwise, Make School’s incentives  
23 were not “aligned” with its students. The actual incentive for Make School was to create a large  
24 ISA pool so Make School could sell those ISAs and receive operating cash, which is precisely  
25

26 <sup>12</sup> <https://vemoeducation.com/blog/2019/01/13/isa-101-a-brief-primer-on-income-share-agreements/>  
(last visited June 23, 2021).

27 <sup>13</sup> Program could change the way college students pay tuition (posted January 14, 2019) at 1:22-1:45, available at  
28 [https://www.youtube.com/watch?v=H7sjk863qLo&ab\\_channel=CBSNews](https://www.youtube.com/watch?v=H7sjk863qLo&ab_channel=CBSNews) (last visited January 24, 2022).

1 what Make School did by inducing students to sign as many as five ISAs to finance the program  
2 using false and deceptive rhetoric.

3  
4 **D. Make School Fails to Live Up to Its Lofty Promises, Causing the Majority of  
5 Make School Students to Withdraw From the Program**

6 66. Plaintiffs and the members of the putative class enrolled at Make School, and  
7 signed expensive ISAs, based on promises that were made to them concerning the value of the  
8 education they were to receive and the debt they could expect to have after graduation.

9 67. Plaintiffs and the members of the putative class were promised a cutting-edge  
10 curriculum and a “powerful professional network” that would sling-shot them into a job at top  
11 technology companies in Silicon Valley and across the world.

12 68. Plaintiffs and the members of the putative class did not receive what they were  
13 promised. The program curriculum was non-existent or underdeveloped and was essentially a  
14 series of online exercises using free open-source material that students could find themselves  
15 without paying expensive tuition (plus living expenses). Many instructors did not have teaching  
16 credentials or advanced degrees that made them qualified for college-level teaching positions.  
17 And courses were frequently taught on the fly without any set structure. Many of the skills  
18 needed to obtain apprenticeships and eventually jobs in the field were either self-taught, taught  
19 by other students, or obtained at outside “bootcamps” not affiliated with Make School (for an  
20 additional fee).

21 69. To be clear, Plaintiffs are not bringing this action because they did not become  
22 software engineers. Some former students of Make School did go on to become software  
23 engineers and some did not. Plaintiffs are bringing this action because Make School and Vemo  
24 misrepresented what Make School provided and the long-term cost of those services.

25 70. As a result of these deceptive business practices, the majority of students who  
26 enrolled in Make School withdrew because they were not provided with the educational services  
27 promised and/or the program was too expensive and not necessary for them to become gainfully  
28 employed.

1           71. According to Make School’s own data, of the 49 students who entered Make  
2 School in 2017, 41 students (86%) either withdrew from the program or were dismissed.<sup>14</sup>  
3 Similarly, at the time the data was reported, of the 92 students who entered Make School in  
4 2018, 42 students (47.8%) had either withdrawn from the program or were dismissed, and the  
5 other half (44 students) was still enrolled, and several of those students subsequently withdrew or  
6 were dismissed as well.<sup>15</sup>

7           72. Despite the fact that the vast majority of Make School students never completed  
8 Make School’s computer science program, Vemo is and will continue to enforce the income  
9 share agreements against Plaintiffs and other former and current Make School students, unless  
10 declaratory or injunctive relief is awarded by this Court.

11 **E. From its Inception until July 12, 2018, Make School Operated Illegally in the**  
12 **State of California without BPPE Approval**

13           73. In addition to these material misrepresentations, Make School, from its inception  
14 until July 12, 2018, operated without approval by the State of California, in violation of  
15 California law and an order by the State requiring it to cease operations.

16           74. Specifically, Make School is regulated by the California Bureau of Private  
17 Postsecondary Education (“BPPE”). Under the Private Postsecondary Education Act, if a  
18 postsecondary institution is not accredited by the regional accreditation agencies (which Make  
19 School was not), state approval by the BPPE is mandatory to open and operate a private  
20 postsecondary institution in the State of California. *See* Cal. Ed. Code § 94886 (“a person shall  
21 not *open, conduct, or do business* as a private postsecondary educational institution in this state  
22 without obtaining an approval to operate under this chapter.”) California law makes it a crime to  
23 “[k]nowingly operat[e] a private postsecondary institution without an approval to operate.” *See*  
24 Cal. Ed. Code § 94943.

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25 <sup>14</sup> [https://docs.google.com/spreadsheets/d/lp\\_oeHqdVhIHnFU9Qidd-Ak3YnbnF518qqhKpuEG-](https://docs.google.com/spreadsheets/d/lp_oeHqdVhIHnFU9Qidd-Ak3YnbnF518qqhKpuEG-mwww/edit#gid=488358698)  
26 [mwww/edit#gid=488358698](https://docs.google.com/spreadsheets/d/lp_oeHqdVhIHnFU9Qidd-Ak3YnbnF518qqhKpuEG-mwww/edit#gid=488358698), available at [https://www.makeschool.com/computer-science-](https://www.makeschool.com/computer-science-degree/outcomes/data)  
27 [degree/outcomes/data](https://www.makeschool.com/computer-science-degree/outcomes/data) (last visited June 23, 2021).

28 <sup>15</sup> *Id.*

1           75.     Furthermore, under California Education Code § 94917, any “note, instrument, or  
2 other evidence of indebtedness relating to payment for an educational program is not enforceable  
3 by an institution unless, at the time of execution of the note, instrument, or other evidence of  
4 indebtedness, the institution held an approval to operate.”

5           76.     At the time that Make School began operating, and continuing for over three  
6 years, Make School knowingly operated illegally without approval from the BPPE. Make  
7 School enrolled hundreds of students, and induced those students to sign ISA agreements, at a  
8 time when Make School did not have approval to operate in the State.

9           77.     On May 2, 2018, the BPPE fined Make School \$100,000 and ordered it to cease  
10 operating until an approval to operate had been obtained. Make School was also ordered to  
11 provide a refund to all students enrolled at the school prior to receiving an approval to operate  
12 because “the enrollment agreements signed by the student are not enforceable since the school  
13 does not have approval to operate.”<sup>16</sup>

14           78.     Despite the clear requirement to cease all operations, Make School continued to  
15 operate and advertise its educational services and ISA program to the public. Make School never  
16 disclosed the BPPE order to students, and instead induced Plaintiffs and members of the putative  
17 class to sign ISAs, even after the May 2, 2018 order to cease operating was issued.

18           79.     The May 2, 2018 citation was modified on or about August 13, 2018 to reduce the  
19 fine assessed to \$25,000.<sup>17</sup> The BPPE did not modify its order with respect to its order of  
20 abatement requiring Make School to provide a refund to students enrolled at Make School prior  
21 to receiving approval to operate.

22           80.     Make School did not obtain approval to operate a non-accredited institution until  
23 July 12, 2018.

24           81.     Make School did not disclose the BPPE citation to Plaintiffs, and on information  
25 and belief, it did not attempt to refund any students who signed ISAs prior to the school having

26 \_\_\_\_\_  
27 <sup>16</sup> [https://www.bppe.ca.gov/enforcement/actions/1718011\\_make\\_school.pdf](https://www.bppe.ca.gov/enforcement/actions/1718011_make_school.pdf) (Last visited June 23,  
2021).

28 <sup>17</sup> [https://www.bppe.ca.gov/enforcement/actions/appeal\\_makeschool.pdf](https://www.bppe.ca.gov/enforcement/actions/appeal_makeschool.pdf) (Last visited June 23, 2021).

1 approval to operate in the State.

2 82. Plaintiffs are informed and believe and thereon allege that Vemo continued to  
3 send bills and other collection notices to former Make School students attempting to receive  
4 payment on the ISA agreements, notwithstanding the BPPE's orders and Education Code Section  
5 94917.

6  
7 **F. Even After it Obtained BPPE Approval, Make School was Required to, But**  
8 **did Not, Keep that BPPE approval in late 2019, 2020, and 2021, Rendering**  
9 **these ISAs Unenforceable.**

10 83. Following the 2018 BPPE order requiring Make School to shut down and refund  
11 students (which Make School ignored), Make School did eventually obtain BPPE approval to  
12 operate, effective July 13, 2018. However, Make School only held that approval for  
13 approximately one year.

14 84. On May 30, 2019, Make School wrote to the BPPE to inform the BPPE that it  
15 had partnered with Dominican University of California ("Dominican") pursuant to the WSCUC  
16 incubation policies, which allowed non-accredited institutions like Make School to partner with a  
17 WSCUC accredited institution (Dominican) with the stated intent of the unaccredited entity  
18 evolving within the accredited institution to the point of becoming separately accreditable under  
19 WSCUC policies. During the incubation relationship, Make School students could obtain a B.S.  
20 degree through Dominican, notwithstanding the fact that Make School lacked its own  
21 accreditation.

22 85. Dominican at all relevant times had approval to operate from the BPPE by virtue  
23 of its status as a WSCUC-accredited institution (Western Association of Schools and Colleges).  
24 However, WSCUC incubation policies are clear that entering into an incubation relationship with  
25 an accredited institution like Dominican does not relieve the incubated entity (here, Make  
26 School) from maintaining its own separate BPPE approval during that incubation relationship.  
27 WSCUC policies provide that "the unaccredited entity [Make School] must seek and obtain its  
28 *own* authorization from California's Bureau of Private Postsecondary Education (BPPE) prior to  
becoming a separately accredited institution." See WSCUC Incubation Policies, § 2(d)(iv),

1 attached hereto as **Exhibit A**.

2 86. Make School and Dominican integrated these WSCUC requirements into their  
3 Memorandum of Understanding (“MOU”). A redacted copy of Dominican’s MOU with Make  
4 School is attached hereto as **Exhibit B**. The MOU provides that Make School “must seek and  
5 obtain its own authorization from California’s [BPPE] prior to becoming a separately accredited  
6 institution.” Ex. B at ¶ I(N).

7 87. Documents and information obtained since the filing of the original complaint in  
8 this action have revealed that Make School made false assertions to the BPPE in 2019 when it  
9 surrendered its BPPE approval about how students would be charged for the computer science  
10 program. In May of 2019, Jeremy Rossmann wrote to the BPPE and claimed that Make School  
11 did not need to be authorized to operate by the BPPE during its incubation relationship with  
12 Dominican because during that relationship Make School “would not be offering postsecondary  
13 education to the public for an institutional charge as the education offerings *and charges* would  
14 be through Dominican.”

15 88. That statement is false, because Make School continued to charge students for  
16 tuition through ISA agreements in 2019, 2020, and 2021. Those ISA agreements are between the  
17 student and Make School (not Dominican). Plaintiffs are informed and believe, and thereon  
18 allege, that the ISAs were never sold or assigned to Dominican, and Dominican has not collected  
19 on Make School’s ISA agreements.

20 89. Make School’s rescission of its BPPE approval became effective on July 19,  
21 2019. The MOU and WSCUC policies are clear that Make School needed to, but did not,  
22 maintain BPPE approval during the incubation relationship. Under California Education Code  
23 section 94917, any ISAs signed after July 19, 2019 are invalid and unenforceable. Nonetheless,  
24 Vemo continues to send bills and other collection notices to members of the putative class  
25 attempting to receive payment on these post-rescission ISA agreements, notwithstanding the  
26 BPPE’s orders and Education Code Section 94917.

1       **F. After Receiving Notice of Plaintiffs' Claims, Make School Enters into an**  
2       **Assignment for the Benefit of the Creditors**

3       90. On April 14, 2021, several Plaintiffs in this lawsuit sent Make School and Vemo a  
4       claim notice pursuant to the ISAs.

5       91. On May 13, 2021, one day before the 30-day notice period expired, Make School  
6       indicated that it was in the process of engaging counsel and that it was very interested in  
7       resolving the matter pre-litigation. In reliance on those statements, Plaintiffs decided not to file a  
8       complaint at that time.

9       92. Between May 14, 2021 and June 3, 2021, the parties exchanged emails and phone  
10       calls concerning the parameters of a settlement that would involve cancellation or amendment to  
11       Make School's ISA contracts.

12       93. However, on June 4, 2021, Make School backed out of those discussions and  
13       instead claimed that "due to the threatened lawsuit and other factors," Make School would be  
14       entering into an assignment for the benefit of the creditors ("ABC") in which it would be  
15       transferring all of Make School's assets to an assignee. As such, Make School no longer held  
16       any assets and no longer had any authority to cancel or modify any ISAs, including Plaintiffs'.  
17       Make School further informed Plaintiffs' counsel that Make School's computer science program  
18       was being administered by a non-profit, which did not hold any of the ISAs. At that time,  
19       however, Make School's counsel would not disclose who the assignee was, who the new  
20       holder(s) of students' ISA contracts was, what specific Make School entity entered into the ABC  
21       and when, and whether Vemo still serviced the ISA contracts.

22       94. It was not until June 22, 2021 that counsel for the assignee disclosed partial  
23       details about the ABC transaction, including that a new Make School entity, Defendant "Make  
24       School ABC, LLC" was the assignee and owned the ISA contracts through its subsidiary,  
25       Defendant "Make School ISA SPV, LLC."

26       95. Make School ceased operating on July 30, 2021.

27       96. On information and belief, the assignee Make School ABC, LLC intends to  
28       market and sell the ISA contracts to a debt buyer, which in turn will continue attempting to



1 collect payments under the ISAs from Plaintiffs and other students through Defendant Vemo  
2 and/or another third party.

3 97. In addition, Plaintiffs are informed and believe, and thereon allege, that one of  
4 Make School's lenders has a security interest in a portion of Make School's ISAs and will likely  
5 foreclose on those assets (if it has not already), and then continue to collect from former Make  
6 School students.

### 7 CLASS ACTION ALLEGATIONS

8 98. Pursuant to California Code of Civil Procedure § 382, Plaintiffs bring this action  
9 individually and on behalf of similarly situated individuals.

10 99. **Class definition.** Plaintiffs Sam Galizia and Eric Botcher bring an action on  
11 behalf of a Class (hereinafter the "Class), which is composed of the following persons:

12 "The approximately 266 Persons who obtained at least one income share  
13 agreement from Make School during the Settlement Class Period that remained  
14 outstanding as of April 28, 2023, and who do not opt out of the Settlement Class  
15 pursuant to this Agreement. Excluded from the Settlement Class are the judges  
16 to whom the Action is assigned and the members of their staff or immediate  
17 family."

18 100. This action is brought and may properly be maintained as a class action under §  
19 382 because there is a well-defined community of interest in the litigation, and the proposed  
20 class is easily ascertainable based on Defendants' records.

21 101. **Numerosity and Impracticability of Joinder.** The proposed class is numerous  
22 and ascertainable. The proposed class consists of approximately three hundred individuals, and  
23 therefore joinder of all individual class members would be impractical.

24 102. **Community of Interest.** There is a well-defined community of interest because  
25 common questions of law and fact exist as to all members of the class and predominate over any  
26 questions solely affecting individual members of the class. There are common questions of law  
27 and fact common to the Class that predominate over questions affecting only individual  
28 members, including, among other things, the following:

a. Whether Make School's income share agreements signed while the school  
did not have the required approval to operate from the BPPE are unenforceable;

1           b.       Whether Defendants’ marketing and promotion of its income share  
2 agreement program violated the California Unfair Competition Law (Cal. Bus. & Prof.  
3 Code § 17200);

4           c.       Whether Defendants’ statements in advertising concerning its income  
5 share agreement program violate the California False Advertising Law (Bus. & Prof.  
6 Code § 17500);

7           d.       Whether Defendants’ statements concerning income share agreement  
8 forgiveness for military veterans violated the California Unfair Competition Law (Cal.  
9 Bus. & Prof. Code § 17200) and/or the California False Advertising Law (Bus. & Prof.  
10 Code § 17500);

11          e.       Whether Vemo has violated the Rosenthal Act (Cal. Civ. Code § 1788 *et.*  
12 *seq.*) by attempting to collect on the amounts allegedly owed Make School’s ISAs that  
13 were signed when the school did not have the required approval to operate from the  
14 BPPE and by sending bills calculated based on average earnings rather than actual  
15 earnings;

16          f.       Whether Vemo’s actions in connection with its servicing of Make  
17 School’s income share agreements violates the Student Loan Servicing Act (Cal. Civ.  
18 Code § 1788.101);

19          g.       Whether Defendants have been unjustly enriched; and

20          h.       The proper measure and calculation of damages.

21       103.   The questions of law and fact listed above will yield common answers for  
22 Plaintiffs and the Class as to whether Defendants are liable for the alleged legal violations.

23       104.   **Typicality of Claims and Relief Sought.** Plaintiffs’ claims are typical of those  
24 of the members of the class. Plaintiffs, like other class members, were subject to the unlawful  
25 practices described herein.

26       105.   **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the  
27 interests of the class and have retained counsel experienced in class action litigation.

1           106. Class treatment is appropriate under California Code of Civil Procedure § 382  
2 because Defendants have acted on grounds that apply generally to the class, so that final  
3 injunctive relief or corresponding declaratory relief is appropriate with respect to the class.

4           107. This action is properly maintainable as a class action under California Code of  
5 Civil Procedure § 382 because questions of law or fact predominate over any questions affecting  
6 individual class members. A class action is superior to other methods in order to ensure a fair and  
7 efficient adjudication of this controversy because, in the context of similar litigation, individual  
8 plaintiffs often lack the financial resources to vigorously prosecute separate lawsuits against  
9 corporate defendants. Class litigation is also superior because it will preclude the need for unduly  
10 duplicative litigation resulting in inconsistent judgments pertaining to Defendants' policies and  
11 practices. There will be no difficulties in managing this action.

12   **FIRST CAUSE OF ACTION**  
13   **(Declaratory and Injunctive Relief)**  
14   **(Asserted by Plaintiff Sam Galizia on Behalf of the Class Against All Defendants)**

15           108. Plaintiff Sam Galizia realleges and incorporates by reference all the allegations  
16 set forth in each of the preceding paragraphs of this Complaint.

17           109. Plaintiff Sam Galizia seeks a declaration pursuant to C.C.P. § 1060 that the ISAs  
18 entered into prior to Make School's approval to operate on a non-accredited basis are void and  
19 unenforceable.

20           110. An actual, present, and justiciable controversy now exists between the parties  
21 with respect to the rights of Plaintiff Sam Galizia and Defendants. On the one hand, Plaintiff  
22 contend that any ISA signed by a student prior to Make School receiving approval from the  
23 BPPE to operate is void and unenforceable. Defendants, on the other hand, dispute the above  
24 contentions, as shown by their attempts to collect 25% or more of his pre-tax income each  
25 month, notwithstanding the fact that the school did not have approval to operate in the State at  
26 the time those ISAs were signed.

27           111. A judicial determination of the rights and obligations of the parties is necessary  
28 and appropriate at this time under the circumstances.

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**SECOND CAUSE OF ACTION**  
**Declaratory Judgment**  
**(Asserted by Plaintiffs on Behalf of the Class Against All Defendants)**

112. Plaintiffs reallege and incorporate by reference all the allegations set forth in each of the preceding paragraphs of this Complaint.

113. Plaintiffs seek a declaration pursuant to C.C.P. § 1060 that the ISAs entered into after Make School rescinded its BPPE approval on July 19, 2019, are void and unenforceable.

114. An actual, present, justiciable controversy now exists between the parties with respect to the rights of Plaintiffs and Defendants. On the one hand, Plaintiffs contend that any ISA signed by a student after Make School rescinded its BPPE approval on July 19, 2019 is void and unenforceable. Defendants, on the other hand, dispute the above contentions, as shown by their attempts to collect Plaintiffs’ income each month, notwithstanding the fact that Make School had no approval to operate in the State at the time those ISAs were signed.

115. A judicial determination of the rights and obligations of Plaintiff and Defendants is necessary and appropriate at this time.

**THIRD CAUSE OF ACTION**  
**(Asserted by Plaintiffs on Behalf of the Class Against All Defendants)**  
**Violation of California’s Unfair Competition Law (“UCL”)**  
**California Business and Professions Code § 17200, *et. seq.***

116. Plaintiffs reallege and incorporate by reference all the allegations set forth in each of the preceding paragraphs of this Complaint.

117. Plaintiffs and Defendants are “persons” within the meaning of the UCL. Cal. Bus. & Prof. Code § 17201.

118. The UCL defines unfair competition to include any “unlawful, unfair, or fraudulent business act or practice,” as well as any “unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

119. By committing the acts and practices alleged herein, Defendants have engaged in

1 unlawful, unfair, and fraudulent business acts and practices in violation of the UCL.

2       120. **Unlawful Conduct:** As a result of engaging in the conduct alleged in this  
3 Complaint, Defendant Make School has violated the UCL’s proscription against engaging in  
4 unlawful conduct by virtue of its violation of state and federal law. More specifically, Defendant  
5 Make School has violated the UCL’s proscription against engaging in “unlawful” business  
6 practices by virtue of its conduct in violation of the Federal Trade Commission Act (“FTCA”),  
7 which prohibits “unfair or deceptive acts or practices in or affecting commerce.” (15 U.S.C. §  
8 45(a)(1)) and prohibits the dissemination of any false advertisements (15 U.S.C. § 52(a)). In  
9 addition to federal law, Defendant Make School has violated California Civil Code §§ 1710 and  
10 1711, California Education Code §§ 94886 and 94943, and California’s False Advertising Law  
11 (Bus. & Prof. Code § 17500). Plaintiffs reserve the right to allege other violations of law, which  
12 constitute other unlawful acts or practices.

13       121. In addition, Defendant Vemo has violated the UCL’s proscription against  
14 engaging in unlawful conduct by virtue of its violation of state and federal law in connection  
15 with its marketing of its ISA contracts through Make School, and in connection with its collection  
16 efforts under those ISAs. More specifically, Defendant Vemo has violated the UCL’s  
17 proscription against engaging in “unlawful” business practices by virtue of its conduct in  
18 violation of the Federal Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive  
19 acts or practices in or affecting commerce.” (15 U.S.C. § 45(a)(1)) and prohibits the  
20 dissemination of any false advertisements (15 U.S.C. § 52(a)), and by virtue of its conduct in  
21 violation of the Fair Debt Collections Practices Act (15 U.S.C. 1692 *et. seq.*) In addition to  
22 federal law, Defendant Vemo has violated California Civil Code §§ 1710 and 1711, California’s  
23 False Advertising Law (Bus. & Prof. Code § 17500), and the Rosenthal Fair Debt Collection  
24 Practices Act, Cal. Civ. Code § 1788 *et. seq.* Plaintiffs reserve the right to allege other violations  
25 of law, which constitute other unlawful acts or practices. Such conduct is ongoing and continues  
26 to this date.

27       122. **Unfair Conduct:** As described above, Defendant Make School has engaged in an  
28

1 “unfair” and deceptive business act or practice by, among other things:

2 a. marketing and promoting ISAs to prospective students in their late teens  
3 and early twenties with no significant experience with financial products without  
4 adequately disclosing the key features of those products;

5 b. marketing and promoting its ISAs not as loans or credit when that  
6 statement is false and misleading and has been expressly rejected by regulators;

7 c. marketing and promoting its ISA tuition model in a way that misled  
8 students to believe that financing Make School with ISA agreements would leave them  
9 financially better off and in less debt compared to students who chose to attend a four-  
10 year university;

11 d. Marketing and promoting an ISA program that failed to adequately  
12 disclose how the ISAs would sequence one after the other and how each ISA could be  
13 extended an additional 36 months, thereby ensuring that the school and/or Vemo would  
14 receive an income share that was as close as possible to exorbitant payment caps that  
15 were 2.5-4 times the original tuition amount or more;

16 e. Falsely claiming that military veterans would be able to attend Make  
17 School at little to no cost once approved as a Yellow Ribbon School by the Department  
18 of Veteran’s Affairs;

19 f. Misrepresenting and concealing to the public, prospective students, and  
20 current students, including Plaintiffs, the true nature of Make School’s financial interest  
21 in students’ success, including by continuing to represent that Make School only got paid  
22 after the students did;

23 g. Introducing new ISA contracts on a take it or leave it basis to students  
24 after those students had already enrolled and invested significant time and money in  
25 Make School’s program; and

26 h. Conducting business without BPPE approval and in violation of BPPE  
27 orders requiring it to cease operations;

1 i. Deliberately concealing the 2018 BPPE order finding that Make School's  
2 ISA agreements signed while the school did not have approval to operate were void and  
3 unenforceable;

4 j. Failing to provide a meaningful curriculum and qualified instructors as  
5 promised.

6 123. As described above, Defendant Vemo has engaged in an "unfair" and deceptive  
7 business act or practice by, among other things:

8 a. marketing and promoting, through Make School, ISAs to prospective  
9 students in their late teens and early twenties with no significant experience with  
10 financial products without adequately disclosing the key features of those products;

11 b. marketing its ISAs as not loans or credit when that statement is false and  
12 misleading and has been expressly rejected by regulators;

13 c. marketing and promoting, through Make School, an ISA tuition model in a  
14 way that misled students to believe that financing Make School with ISA agreements  
15 would leave them financially better off and in less debt compared to students who chose  
16 to attend a four-year university;

17 d. marketing and promoting, through Make School, an ISA program that  
18 failed to adequately disclose how the ISAs would sequence one after the other and how  
19 each ISA could be extended an additional 36 months, thereby ensuring that the school  
20 and/or Vemo would receive an income share that was as close as possible to exorbitant  
21 payment caps that were 2.5-4 times the original tuition amount;

22 e. Falsely claiming that military veterans would be able to attend Make  
23 School at little to no cost once approved as a Yellow Ribbon School by the Department  
24 of Veteran's Affairs; and

25 f. Continuing to collect on income share agreements signed when the school  
26 did not have BPPE approval to operate notwithstanding the fact that those agreements are  
27 void and unenforceable.

1           124.   ***Fraudulent Conduct:*** A business act or practice is “fraudulent” under the UCL if  
2 it is likely to deceive members of the consuming public.

3           125.   Make School and Vemo’s acts and practices alleged above constitute fraudulent  
4 business acts or practices because they have deceived Plaintiffs and are highly likely to deceive  
5 members of the consuming public.

6           126.   Each of the Plaintiffs relied on Make School and Vemo’s fraudulent and  
7 deceptive representations regarding Make School and its ISA tuition model.

8           127.   Plaintiffs would not have entered into ISA agreements without Make School  
9 and/or Vemo’s representations.

10          128.   ***Unfair, deceptive, untrue, or misleading advertising:*** Make School and Vemo’s  
11 advertising of its ISA agreements, and Make Schools’ advertising of its computer science  
12 program constitutes unfair, deceptive, untrue, or misleading advertising under the UCL.

13          129.   Advertising is misleading under the UCL if members of the public are likely to be  
14 deceived.

15          130.   As set forth above, the above-described representations concerning Make  
16 School’s computer science program and ISA tuition model were communicated to Plaintiffs and  
17 other prospective Make School students, and the advertisements are likely to mislead a  
18 reasonable person into believing that a meaningful curriculum and qualified instructors would be  
19 provided to students, and that financing that program with ISAs would leave them financially  
20 better off than their peers who attended traditional four-year universities.

21          131.   This UCL claim is brought against Make School ABC, LLC and Make School  
22 ISA SPV, LLC pursuant to the FTC holder rule and related California law, which preserves  
23 Plaintiffs’ right to assert claims and defenses against the holder of the ISAs even if those  
24 contracts are assigned to a third party.

25          132.   Defendants’ violations of the UCL continue to this day, as Vemo, Make School’s  
26 assignees, and any subsequent loan servicers, will continue collection efforts on the ISA  
27 contracts. Unless restrained and enjoined, Plaintiffs and the Class will continue to receive  
28



1 demands for exorbitant amounts of money under the ISA contracts, the assignee, and/or whoever  
2 the assignee markets and sells the ISA contracts to as part of Make School’s liquidation.

3  
4 **FOURTH CAUSE OF ACTION**  
5 **(Asserted by Plaintiffs on Behalf of the Class Against all Defendants)**  
6 **Violation of California’s False Advertising Law (“FAL”)**  
7 **California Business and Professions Code § 17500, *et. seq.***

8 133. Plaintiffs reallege and incorporate by reference all the allegations set forth in each  
9 of the preceding paragraphs of the Complaint.

10 134. California Business and Professions Code § 17500 broadly proscribes “untrue or  
11 misleading statements in advertising” in connection with the performance of services.

12 135. Defendant Make School provides a service to consumers in which consumers sign  
13 up for “educational/training services.”

14 136. In connection with the performance of those services, Defendants Make School  
15 and Vemo intended to and did make untrue and misleading statements in advertising in violation  
16 of the FAL. Make School’s online content and statements concerning the cost of the ISAs, which  
17 was endorsed and promoted by Vemo, violate the FAL because for the reasons described above,  
18 those statements have deceived Plaintiffs and are likely to deceive members of the public.

19 137. Further, Make School’s untrue statements that military veterans would be able to  
20 attend Make School at little to no cost violate the FAL because those statements have deceived  
21 Plaintiffs and are likely to deceive members of the public.

22 138. Plaintiff and other Make School students suffered injury in fact as a result of  
23 Defendant Make School’s actions as set forth herein because each of the Plaintiffs enrolled at  
24 Make School and signed ISA agreements in reliance on Make School’s false and misleading  
25 claims.

26 139. Plaintiffs discovered the falsity of Make School’s advertisements and promotional  
27 statements between 2019 and 2020, once they began to learn from fellow students who had  
28 begun receiving bills from Vemo the true long-term cost of the ISAs was not what had been

1 disclosed to them prior to enrollment.

2 140. Make School and Vemo have profited from their collection efforts under the ISA  
3 contracts and continue to collect on those agreements.

4 141. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiffs are entitled to  
5 public injunctive relief and equitable relief and restitution.

6 142. This claim is brought against Make School ABC, LLC and Make School ISA  
7 SPV, LLC pursuant to the FTC holder rule and related California law, which preserves Plaintiffs'  
8 right to assert claims and defenses against the holder of the ISAs even if those contracts are  
9 assigned to a third party.

10  
11 **FIFTH CAUSE OF ACTION**

12 **Violation of the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”)**  
13 **(Asserted by Plaintiffs on Behalf of Proposed Class Against Defendant Vemo)**  
14 **Cal. Civil Code § 1788 *et. seq.***

15 143. Plaintiffs reallege and incorporate by reference all the allegations set forth in each  
16 of the preceding paragraphs of the Complaint.

17 144. Each of the Plaintiff’s financial obligations allegedly owed under the ISA  
18 contracts at issue in this case is a “debt” and a “consumer debt” as those terms are defined by the  
19 RFDCPA, Cal. Civil Code § 1788.2(d) and (f).

20 145. Defendant Vemo is a “debt collector” as that term is defined by the RFDCPA,  
21 Cal. Civil Code § 1788.2(c).

22 146. Each of the Plaintiffs is a “debtor” as that term is defined by the RFDCPA, Cal.  
23 Civil Code § 1788.2(h).

24 147. For the reasons set forth above, the ISA contracts entered into before Make  
25 School had BPPE approval to operate in the State of California are void and unenforceable. By  
26 collecting and attempting to collect the amounts under these ISA contracts, Vemo violated the  
27 RFDCPA. Vemo’s violations include, but are not limited to, the following: (a) misrepresenting  
28 the character, amount, or legal status of the debt, in violation of 15 U.S.C. § 1692e(2)(A),

1 incorporated into state law by California Civil Code § 1788.17; (b) misrepresenting the  
2 compensation which may be lawfully received by Vemo and/or Make School for the collection  
3 of the debt, in violation of 15 U.S.C. § 1692e(2)(B), incorporated into state law by California  
4 Civil Code § 1788.17; and (c) attempting to collect interest, fees, or other charges from Plaintiffs  
5 that are not expressly authorized by the agreement creating the debt or otherwise permitted by  
6 law, in violation 15 U.S.C. § 1692f(1), incorporated into state law by California Civil Code §  
7 1788.17.

8 148. Vemo also violated the RFDCPA by sending former Make School students billing  
9 statements that reflected “average earnings for a person working full-time” in the student’s field  
10 of study as opposed to actual amounts owed under the ISA agreements.

11 149. Before a student’s payment period began, the student received a notice from  
12 Vemo informing them that the payments under the ISAs will soon begin. The email requests  
13 income documentation from which to calculate the amount owed under the ISA, if any. If the  
14 student does not provide income documentation within 30 days before the first scheduled  
15 payment is due, Vemo issues a bill that purportedly reflects 25% of the pre-tax “average  
16 earnings” for a person working full-time in the student’s field of study.

17 150. That “average” or estimate of what Vemo thinks *might* be owed under the ISAs is  
18 not a statement of the actual current amount due. Yet, the bills received by the student provide no  
19 disclosure that the bill is an estimate and does not actually reflect the actual amount owed.

20 151. By sending purported bills based on “average earnings” to Plaintiffs, Vemo  
21 violated the RFDCPA. Vemo’s violations include, but are not limited to, the following: (a)  
22 misrepresenting the character, amount, or legal status of the debt, in violation of 15 U.S.C. §  
23 1692e(2)(A), incorporated into state law by California Civil Code § 1788.17; (b) misrepresenting  
24 the compensation which may be lawfully received by Vemo and/or Make School for the  
25 collection of the debt, in violation of 15 U.S.C. § 1692e(2)(B), incorporated into state law by  
26 California Civil Code § 1788.17; and (c) attempting to collect interest, fees, or other charges  
27 from Plaintiffs that are not expressly authorized by the agreement creating the debt or otherwise  
28

1 permitted by law, in violation 15 U.S.C. § 1692f(1), incorporated into state law by California  
2 Civil Code § 1788.17.

3 152. Vemo’s acts as described herein were done willfully and knowingly with the  
4 purpose of coercing Plaintiffs to pay the debt, as that term is defined by Cal. Civil  
5 Code § 1788.30(b).

6 153. As a result of Vemo’s violations of the RFDCPA, Plaintiffs and the Class are  
7 entitled to an award of actual damages in an amount to be determined at trial, pursuant to Cal.  
8 Civil Code §§ 1788.17.<sup>18</sup>

9  
10 **SIXTH CAUSE OF ACTION**  
11 **(Asserted by Plaintiffs on Behalf of the Class Against Defendant Vemo)**  
12 **Violation of the Student Loan Servicing Act**  
13 **California Code § 1788.101**

14 154. Plaintiff realleges and incorporates by reference all the allegations set forth in  
15 each of the preceding paragraphs of the Complaint.

16 155. This Court eight for violation of the California Student Loan Servicing Act (the  
17 “SLSA”) is brought in the alternative to Plaintiffs’ Count five for violation of the Rosenthal Fair  
18 Debt Collection Practices Act, to the extent that Vemo is not determined to be a “debt collector”  
19 within the meaning of subdivision (c) of California Civil Code section 1788.2.

20 156. Plaintiffs are “borrowers” within the meaning of subsection (a) of the SLSA  
21 because they are each a person who received a student loan.

22 157. Plaintiffs’ ISAs are “student loans” within the meaning of subsection (q) of the  
23 SLSA because they are loans made solely to finance a postsecondary education (*i.e.*, Make  
24 School’s computer science program), and they do not fall within any of the exceptions to the  
25 definition of a student loan set forth in subsections (q)(2).

26 158. Defendant Vemo is a “student loan servicer” within the meaning of subsection (s)  
27 of the SLSA because it is “engaged in the business of servicing student loans in this state.”

28 <sup>18</sup> 15 U.S.C. § 1692k(a)(1).

1           159. SLSA section 1788.101(b)(1) broadly prohibits student loan servicers from  
2 engaging in abusive acts or practices when servicing a student loan.

3           160. Among other things, a student loan servicer violates the SLSA by  
4 “[d]irectly or indirectly employing a scheme, device, or artifice to defraud or mislead a  
5 borrower.” Cal. Civ. Code § 1788.101(b)(1).

6           161. Defendant Vemo worked in coordination with Make School to employ a scheme  
7 to defraud Plaintiffs and the Class in violation of the SLSA.

8           162. Among other things, Plaintiffs are informed and believe and thereon allege that  
9 Vemo drafted the ISAs (including its numerous unconscionable terms) and marketed those ISAs  
10 to Make School as a way for both entities (Vemo and its partner school) to make money off  
11 students. Vemo partnered with Make School and specifically sought to market and promote its  
12 ISA agreements through Make School. Plaintiffs are informed and believe, and thereon allege,  
13 that Vemo is familiar with, and approved, its partner school’s advertising and enrollment  
14 practices Accordingly, Vemo was well aware of, and actively participated in and facilitated a  
15 scheme to defraud and/or mislead borrowers.

16           163. In addition, a student loan servicer violates the SLSA by “misrepresent[ing] or  
17 omit[ting] material information in connection with the servicing of a student loan, including, but  
18 not limited to, the amount, nature, or terms of a fee or payment due or claimed to be due on a  
19 student loan, the terms and conditions of the student loan agreement, or the borrower’s  
20 obligations under the student loan.” Cal. Civil Code § 1788.101(b)(2).

21           164. For the reasons set forth above, the ISAs signed by Plaintiffs and the Class are  
22 void and unenforceable because Make School do not have approval to operate in the State of  
23 California from the BPPE, as required by the California Education Code.

24           165. By collecting and attempting to collect the amounts under Make School’s ISA  
25 contracts, Vemo knowingly violated the SLSA by misrepresenting and omitting material  
26 information in connection with the servicing of a student loan, namely, that the instruments upon  
27 which it was trying to collect are not enforceable under the California Education Code.

1           166. As a result of Vemo's violations of the SLSA, Plaintiffs and others have signed  
2 ISAs and have made payments on those ISAs.

3           167. As a result of Vemo's violations of the SLSA, Plaintiffs and others have signed  
4 ISAs and have made payments on those ISAs.

5  
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7                                   **SEVENTH CAUSE OF ACTION**  
8                                   **Unjust Enrichment**  
9                                   **(Asserted by Plaintiffs on Behalf of the Class Against all Defendants)**

10           168. Plaintiffs reallege and incorporate by reference all the allegations set forth in each  
11 of the preceding paragraphs of the Complaint.

12           169. By their wrongful acts and omissions, Defendants were unjustly enriched at the  
13 expense of and to the detriment of Plaintiffs and the Class. Defendants were unjustly enriched as  
14 a result of the compensation they have received from the marketing and sale of the unlawful and  
15 unfair ISAs to Plaintiffs.

16           170. Plaintiffs seek restitution from Defendants and seek an order of this Court  
17 disgorging all profits, benefits, and other compensation obtained by Defendants from their  
18 wrongful conduct.

19           171. Plaintiffs and the Class have no adequate remedy at law.

20                                   **PRAYER FOR RELIEF**

21           WHEREFORE, Plaintiffs pray for relief and judgment against Defendants as follows:

22           **For the First Cause of Action (Declaratory and Injunctive Relief):**

23           a. A declaration by the Court that any income share agreements entered into prior to  
24 Make School having approval to operate in the State of California are unlawful and  
25 unenforceable;

26           b. A preliminary and permanent injunction restraining and enjoining Defendants  
27 from enforcing any income share agreement signed prior to Make School having obtained  
28 approval to operate in the State of California, or, if Defendants are not the current owner of the

1 ISAs, enjoin the current owner from collecting on any ISA signed prior to Make School having  
2 obtained approval to operate in the State of California;

3 c. For restitution and disgorgement of all monies wrongfully collected pursuant to  
4 unenforceable ISAs entered into prior to Make School having obtained approval to operate in  
5 the State of California;

6 d. For costs of suit;

7 e. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5; and

8 f. For such other and further relief as the Court deems just and proper.  
9

10 **For the Second Cause of Action (Declaratory and Injunctive Relief):**

11 a. A declaration by the Court that any income share agreements entered into after  
12 Make School rescinded its approval to operate in the State of California are unlawful and  
13 unenforceable;

14 b. A preliminary and permanent injunction restraining and enjoining Defendants  
15 from enforcing any income share agreement signed after Make School rescinded its approval to  
16 operate in the State of California, or, if Defendants are not the current owner of the ISAs, enjoin  
17 the current owner from collecting on any ISA signed after Make School rescinded its approval to  
18 operate in the State of California;

19 c. For restitution and disgorgement of all monies wrongfully collected pursuant to  
20 unenforceable ISAs entered into after Make School rescinded its approval to operate in the State  
21 of California;

22 d. For costs of suit;

23 e. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5; and

24 f. For such other and further relief as the Court deems just and proper.  
25

26 **For the Third Cause of Action (Cal. Bus & Prof. Code § 17200):**

27 a. For an order declaring that the business acts or practices complained of herein are  
28

1 unlawful and violate Cal. Bus & Prof. Code § 17200.

2 b. For an order requiring Defendants to cancel all ISA agreements of the Class and  
3 refund those students for all payments he or she has made, or, if Defendants are not the current  
4 owner of those ISAs, order the owner to cancel or refund students for all ISA payments made.

5 c. For an order otherwise making full restitution of all monies wrongfully obtained  
6 from Defendants' violations of the UCL, as alleged in this Complaint;

7 d. For prejudgment interest;

8 e. For costs and reasonable attorney fees incurred by counsel for Plaintiffs, including  
9 in accordance with California Code of Civil Procedure § 1021.5; and

10 f. For such other and further relief as the Court may deem just and proper under the  
11 circumstances.

12  
13 **For the Fourth Cause of Action (Cal. Bus & Prof. Code § 17500):**

14 a. A declaration that the practices complained of herein are unlawful and violate  
15 Cal. Bus. & Prof. Code § 17500;

16 b. Awarding Plaintiffs their damages in an amount to be determined at trial,  
17 including compensatory damages, consequential damages, punitive damages, and any other  
18 damages provided under relevant laws;

19 c. An order awarding Plaintiffs attorneys' fees and costs;

20 d. An order awarding Plaintiffs pre-judgment and post-judgment interest, as allowed  
21 by law; and

22 e. Such further relief as may be appropriate.

23  
24 **For the Fifth Cause of Action (Cal. Civ. Code § 1788.17):**

25 a. With respect to Plaintiffs, For actual damages and a recovery of \$1,000 civil  
26 penalty pursuant to civil code § 1788.30(a)-(b).

27 b. With respect to Plaintiffs, for actual damages and a recovery of \$1,000 civil  
28



1 penalty pursuant to 15 U.S.C. § 1692k(a)(1) which has been incorporated into state law by  
2 California Civil Code § 1788.17.

3 c. With respect to the Class, for actual damages, and statutory damages equal to  
4 \$500,000 or 1 percent of the net worth of the Defendants pursuant to 15 U.S.C. § 1692(a)(2)(B),  
5 which has been incorporated into state law by California Civil Code § 1788.17.

6 d. Prejudgment interest;

7 e. Reasonable attorney fees and costs; and

8 f. Such other and further relief as the Court may deem just and proper under the  
9 circumstances.

10 **For the Sixth Cause of Action (Cal. Civ. Code § 1788.101)**

11 a. An injunction restraining and enjoining Vemo from violating any provision of the  
12 SLSA connection with the servicing of Make School's ISAs;

13 b. For restitution and disgorgement of all monies wrongfully collected under Make  
14 School's ISA(s);

15 c. Punitive damages;

16 d. Awarding Plaintiff costs and reasonable attorney fees in accordance with Cal.  
17 Civ. Code § 1788.103(b)(4); and

18 e. For such other and further relief as the Court deems just and proper.

19 **For the Seventh Cause of Action (Unjust Enrichment):**

20 a. Disgorgement of, restitution of, and/or imposing a constructive trust upon, the ill-  
21 gotten gains derived by Defendants from their unjust enrichment; and

22 b. For such other and further relief as may be appropriate.

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**DEMAND FOR JURY TRIAL**

Based on the foregoing, Plaintiffs hereby demand a jury trial for all claims so triable.

Dated: August 21, 2023

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# **EXHIBIT A**

## Incubation Policy

### Review, Monitoring and Approval of Proposed “Incubation” Relationships with WSCUC Accredited Institutions Policy

(Excerpted from the Substantive Change Manual: see sub-section “ORGANIZATIONAL CHANGE: Accreditation of an Unaccredited Entity through Affiliation with an Accredited Institution”)

This section applies to proposals in which an entity that is not WSCUC accredited seeks to create a formal relationship with a WSCUC accredited institution with the stated intent of the unaccredited entity evolving within the accredited institution to the point of becoming separately accreditable under WSCUC policies. The targeted time to achieve the goal of separate accreditation may be uncertain or addressed at an undefined future date. To be considered for Commission approval, the entity seeking to affiliate with the accredited institution must represent a coherent educational program or organizational configuration that can be envisioned as potentially becoming a stand-alone institution in compliance with WSCUC’s Separately Accreditable Institutions Policy.

For the purposes of this section, the proposed affiliation will be referred to as an “incubation” relationship. The concept of incubation applies to scenarios such as<sup>1</sup>:

- A new entity with robust resources that would likely achieve WSCUC accreditation on its own once it has graduated from a program but wishes to move more quickly into the category of an operational higher education institution
- An innovative or experimental educational entity that desires a period of time as an actual part of the higher education sector to demonstrate whether it is viable on its own

In view of the fact that the implications of such a relationship extend beyond those of a substantive change for a new program, this section anticipates the multiple areas to be reviewed, over an extended period of time, in preparation for a sequence of actions by the full Commission.

#### SCOPE OF REVIEW

Substantive change proposals are expected to address the following:

1. Submitting Entity: The institution that holds WSCUC accreditation will prepare and submit the proposal to enter into an incubation relationship, with the full and informed collaboration of the unaccredited entity. This is essential in view of the fact that WSCUC has jurisdiction only over the

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<sup>1</sup> In such cases where a segment or operational unit of an existing accredited institution intends to create a separate identity and/or organizational structure apart from the parent institution, such as an online division or an adult-serving institution, the emerging entity must apply for its own accreditation following the process outlined in the How to Become Accredited Manual.

accredited institution. This institution, through its continuous supervision of the unaccredited entity as an organic component of its own organization, is expected to ensure its compliance with WSCUC requirements at each stage of the process.

2. **Planning:** Planning documents, including a signed MOU, should address the full range of the envisioned relationship, including:
  - a. **Purposes:** The proposal must express how the relationship harmonizes with and furthers the mission of each entity. To this end, it should specify what each party seeks to accomplish by the collaborative agreement in terms of the intended outcomes – financial (such as return to investors for a for-profit institution), academic, and organizational. These intended outcomes must comply at each stage with WSCUC Standards for institutional accreditation.
  - b. **Governance and Control:** The application must include a precise statement of the roles of each entity in both the immediate and the eventual governance structures, with specific attention to defining the controlling interests and ensuring compliance with WSCUC criteria for independent governing boards. It should be clear that the board of the accredited entity exercises sufficient authority and autonomy over the resulting institution to ensure its compliance with WSCUC Standards, with particular attention to oversight of curriculum, resource allocation, and institutional identity. The entity being incubated should have its own governance structure ready to become operational at the time it seeks to achieve separate accreditation. [See Governing Board Policy.]
  - c. **Academic Services:** The proposal must include a thorough delineation of shared or specified academic responsibilities, including ensuring that the accredited entity:
    - i. Is responsible for transcripts and records, financial aid, admissions and registration processes and the criteria by which these decisions will be made, and is the entity into which students register.
    - ii. Approves student handbooks, policies, and complaint processes, and determines whether any documents apply differentially to each entity.
    - iii. Determines faculty policies, workloads, roles and responsibilities, terms of employment and awards of tenure or similar designations.Such delineations must be sufficiently comprehensive to cover all aspects of the incubated unit.
  - d. **Terms of Separation:** The proposal must address at what point, and by what criteria, the “incubated” entity will be regarded as ready to seek Eligibility and separate accreditation, including a timeline for the anticipated length of the incubation and the eventual separation. Since the governing bodies of each entity will make these decisions, both entities’ governing boards must formally approve this aspect of the proposal. The following elements must be addressed:
    - i. **Financial Agreements:** Specify how tuition revenues and debt obligations will be addressed by each entity; how faculty and staff salaries will be transitioned at the time of separation; and how shared assets, including intellectual properties, will be distributed.
    - ii. **Enrollment and Teach-outs:** Specify how students’ enrollment status will be protected during a transition away from the joint entity. Describe the conditions under which the new entity will enroll its own students and issue diplomas and transcripts in its own name without reference to the name of the parent entity. If any programs offered under the auspices of the joint entity will be discontinued, describe the teach-out agreements that will be implemented at the time of the closure of the program.
    - iii. **Assets and Resources:** Describe in detail the assets, resources, and liabilities that will

be brought to the accredited entity by the agreement and how values will be assigned and assets distributed to each entity upon the separation.

- iv. *State Authorization*: If the institution is located in California, stipulate that the unaccredited entity must seek and obtain its own authorization from California's Bureau of Private Postsecondary Education (BPPE) prior to becoming a separately accredited institution.
  - v. *Title IV Program Participation*: Stipulate that the unaccredited entity must seek and obtain its own federal OPEID number and Program Participation Agreement (PPA) for Title IV purposes prior to recognition as an accredited institution, unless the institution elects not to participate in Title IV. The newly accredited entity must be prepared at that time to manage Title IV obligations or to delegate them to a qualified contractor.
3. Legal Review: All memoranda of understanding and other founding documents will be subject to legal review as determined by WSCUC staff to ensure that the resulting organization complies fully with WSCUC policies and criteria in such areas as governance, accountability, and quality control. The costs for such review will be invoiced to the applicant institution in addition to other specified fees for the level of review required. Both parties must also specify in writing how they will address any conflicts that may entail legal counsel in terms of the mode and venue for conflict resolution.
  4. Protocol for Review: A WSCUC accredited institution proposing to enter into a partnership with an unaccredited entity for the purpose of incubating the unaccredited entity will be subject to a review by the WSCUC staff, the Substantive Change Committee, and the Structural Change Committee of the WSCUC Commission. To begin consideration, WSCUC staff will examine the proposal and supporting documentation to determine the appropriate review procedure to be followed. A recommendation for Commission action will be made only when both the staff and the Substantive Change Committee have found that the proposed change sufficiently meets the WSCUC standards to potentially be considered for approval. A site visit by a Substantive Change Committee panel will likely be required as part of the review. This recommendation is referred to the Commission's Structural Change Committee for review and action and subsequently referred to the full Commission for final approval. The arrangement will be evaluated at the time of the next comprehensive review or within six years after implementation, whichever comes first.

Officers from the accredited institution should consult with their WSCUC staff liaison before submitting a proposal under this section.

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*Revised by the Commission February 2015*  
*Revised, June 2018*

# **EXHIBIT B**

**Memorandum of Understanding Between  
Dominican University of California & Make School, Inc.**

WHEREAS, Dominican University of California (“Dominican”), a California non-profit public benefit corporation, four-year postsecondary institution accredited by the WASC Senior College and University Commission (WSCUC) that offers undergraduate and graduate level degrees at its primary campus in San Rafael, California, wishes to increase the digital literacy of its students and faculty and to add a computer science minor to its approved curriculum;

WHEREAS, Make School, Inc. (“MKS”) a Delaware for-profit corporation and two-year post-secondary program that uses a project/product-focused pedagogy focusing on teaching coding and computing skills for technology product development, whose curriculum consists of courses in computer science theory, web development, mobile apps, and data science, wishes to collaborate with Dominican to add general education courses such as those offered by Dominican to its curriculum to enable it to award bachelor degrees and to otherwise develop and enhance its educational activities with a goal of securing WSCUC accreditation;

WHEREAS, WSCUC’s *Policy for Review, Monitoring and Approval of Proposed “Incubation” Relationships with WSCUC Accredited Institutions* (“Incubation Policy”) allows for the creation of an incubation relationship where the accredited entity oversees the development of the unaccredited entity with the express goal of assisting the unaccredited entity in achieving separate WSCUC accreditation; and

WHEREAS, the Parties to this Agreement wish to establish such a relationship under WSCUC’s Incubation Policy;

THEREFORE, the Parties to this Agreement do hereby agree as follows:

**I. Overview and Purpose of Relationship**

**A. Creation of Incubation Relationship**

(1) **Establishment of MKS-Dominican.** With the purpose of furthering the mission of each of the Parties, consistent with Dominican’s purposes as a California nonprofit public benefit corporation, the Parties agree to an incubation relationship consistent with the requirements of WSCUC’s Incubation Policy that shall result in the establishment of new school of Dominican, hereafter “MKS-Dominican,” that shall remain in operation during the term of this Agreement and during any subsequent renewals thereto, the purpose of which shall be to both enable Dominican to enhance its capabilities in technology-related areas and provide the opportunity for MKS to transition to a WSCUC-accredited institution.

(2) **Location of MKS-Dominican.** The Parties further agree that, as set forth in detail below, MKS-Dominican will be co-located at the MKS San Francisco campus (the “San Francisco Location”), which will become an instructional site for Dominican during the term of this Agreement subject to Dominican’s control and oversight. The Parties agrees that the San Francisco Location is desirable for its proximity to technology hubs, highly qualified instructional personnel and student employment and internship opportunities.

(3) **Definition of MKS-Dominican.** MKS-Dominican shall be a separate school of Dominican which shall offer courses leading to an academic degree taught by MKS-Dominican



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faculty at the San Francisco Location. In addition, students enrolled at Dominican's San Rafael campus located at 50 Acacia Avenue in San Rafael, California (the "San Rafael Location") shall be eligible to register for courses taught by MKS-Dominican faculty offered through the San Rafael Location, including courses offered for credit at the San Rafael Location that are offered in furtherance of a computer science minor. MKS-Dominican shall also serve the purpose of offering faculty development to Dominican faculty at the San Rafael Location with respect to the incorporation of digital literacy into Dominican's curriculum, as needed and determined by the parties.

**B. Alignment of Incubation Relationship with Mission**

The Parties agree that the incubation relationship established pursuant to this Agreement is intended to further the mission of each party in the following ways:

**1. Dominican's Mission**

The incubation relationship is intended to further the mission of Dominican, insofar as MKS-Dominican will provide:

- Dominican with the ability to add digital literacy and digital skills to its current curriculum to ensure students' work readiness and marketability in all majors.
- The opportunity for Dominican to develop new certificates, badges and a minor in Computer Science that would better prepare its students for career and graduate programs;
- Faculty development to prepare Dominican's faculty to incorporate digital literacy/skills in their classes;
- An investment by MKS in shared IT to allow Dominican to properly manage admissions, registration, and related administration of MKS-Dominican in San Francisco as well as to improve such services in San Rafael.
- An additional means of offering integrated learning consistent with Dominican's Dominican Experience, including digital portfolios, mentoring, community engagement and signature work.

**2. MKS's Mission**

The incubation relationship is intended to further the mission of MKS, insofar as MKS-Dominican will:

- Enable MKS to develop the appropriate programs, personnel, policies and procedures such that it will be eligible to transition MKS-Dominican to an independent institution with WSCUC-accreditation;

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- Enable MKS to ensure that its graduates acquire the benefits of a quality general education in conjunction with obtaining their accredited bachelors' degree in computer science.

**C. Relationship Between Dominican & MKS; MKS Program Start Date**

The Parties agree that they shall enter into an incubation relationship, pursuant to this Agreement, during which period Dominican will retain oversight and control over MKS-Dominican's programs and activities as more fully described herein. The effective date of this Agreement shall be the date when this Agreement has been signed by both parties ("Effective Date").

The Parties agree that, subject to the approval of WSCUC, Dominican's Board of Trustees and Faculty, and any other legally required approvals, MKS-Dominican shall begin offering programs in the Spring 2019 semester, or in the first semester thereafter upon receipt of all required approvals. The parties further agree to target November 2018 for WSCUC approval of MKS-Dominican. Prior to the launch of MKS-Dominican, the parties shall use best efforts to offer general education courses to students enrolled at the San Francisco Location in order to facilitate the receipt of degrees.

**D. Goal of Partnership**

The Parties agree that the following are explicit goals of the incubation relationship:

- A transfer of knowledge between the parties so that Dominican adds digital competencies and computer science courses to its curriculum by means of faculty development and sharing of course content and MKS adds general education courses to its curriculum by means of faculty development and sharing of course content
- An investment in Dominican's technology that will allow it to both provide the required database dependent services for MKS-Dominican at the San Francisco location and MKS-Dominican courses on Dominican's campus.
- MKS will have established governance, administrative and academic systems, policies and practices consistent with WSCUC Standards so that it will be fully qualified to be recognized as a free-standing WSCUC-accredited institution at the conclusion of the incubation period; the duration of said incubation period to be determined by the Parties and WSCUC in accordance with its Incubation Policy then in effect.

**E. Governance and Control of MKS-Dominican**

The Parties to this Agreement do hereby agree that Dominican, as the accredited institution, shall retain control over MKS-Dominican according to WSCUC guidelines and all applicable laws and regulations, and as detailed in the provisions below. It is the intention of the Parties to enable MKS to become a stand-alone, WSCUC-accredited institution after the incubation period. As such, the Parties agree that the relationship created pursuant to this Agreement is intended over a three-year period to develop MKS's competencies to govern and operate as a WSCUC-accredited institution, with MKS-Dominican gaining increasing autonomy during this time period, as determined to be appropriate by Dominican in its sole authority.

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**i. Administrative Oversight of MKS-Dominican**

(1) The Parties agree to create the new position of Dean of MKS-Dominican (“Dean”), who shall have qualifications, duties and responsibilities at least comparable to those of Dominican Deans in similar positions.

(2) The Dean shall be subject to the control of Dominican and shall have direct reports as specified herein. The sole authority for hiring, evaluating and retaining the Dean shall reside with Dominican. MKS shall have input into the search process, including engagement in the interview process and be consulted respecting hiring, evaluating and retaining the Dean. The Dean shall report to the Vice President for Academic Affairs at Dominican and shall serve on Dean’s Council. The Dean shall work closely with the co-CEOs of MKS, who shall provide Dominican with input and recommendations on the performance of the Dean. The Dean shall have his or her primary work location at MKS-Dominican in San Francisco.

(3) The Parties shall jointly develop the job description for the Dean. At a minimum, the Dean shall hold a terminal degree and shall have the requisite experience necessary to enable her/him to oversee MKS-Dominican in a manner that ensures compliance with WSCUC’s standard and Dominican’s policies and procedures.

(4) A Director of Academic Compliance, whose duties shall be similar to the current Director of Operations position at Dominican, will be hired by MKS to assist and shall report to the Dean in operating MKS-Dominican. The Parties shall jointly develop the job description for the Director of Academic Compliance.

(5) As more fully provided herein MKS will bear the cost of said Dean and the Director of Academic Compliance during the term of this Agreement. These positions shall be on MKS’s payroll and benefits programs and workers’ compensation insurance unless otherwise required by WSCUC. If not, MKS shall reimburse Dominican for the gross salary, benefits, and overhead for these positions on a calendar month basis, said payments to commence within 30 days of the end of the first month in which each employee was hired.

**ii. Board Oversight of MKS-Dominican**

(1) MKS-Dominican will be operated as an academic unit of Dominican consistent with Dominican’s governance policies as implemented by its Board of Trustees.

(2) The Board of Trustees of Dominican shall oversee the operation of MKS-Dominican, its academic operations, degrees, academic integrity, and compliance, in the same manner at the Board exercises oversight and control over such functions at Dominican as a whole.

(3) MKS’s Board of Directors will continue to manage the business and affairs of MKS.

(4) To satisfy WSCUC’s standards for a free-standing accredited institution, the Board of Directors of MKS will develop a structure and governance processes to enable it to meet WSCUC’s standards upon separation.

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**iii. Faculty Oversight of MKS-Dominican**

(1) During the term of this Agreement, the faculty of Dominican shall approve MKS-Dominican's curriculum, course offerings, content, evaluation, grading, learning outcomes and shall retain all other customary oversight of the academic operations of MKS-Dominican, consistent with Dominican's shared governance policies and procedures. The Parties agree that, to ensure MKS qualifies as a stand-alone institution at the conclusion of the incubation period, Dominican shall provide MKS with recommendations for improvement or modifications to academic programs offered at MKS-Dominican within 45 days of the end of each term occurring within this Agreement.

(2) Prior to offering any courses under this Agreement, the Parties agree to follow the assessment of an external evaluator for the current courses being offered by MKS that are intended to be offered for an accredited degree to ensure that the quality and learning outcomes of MKS-Dominican courses are consistent with the standards for a WSCUC-accredited institution. The external evaluator shall also evaluate the credentials and teaching effectiveness of MKS's current faculty. The Parties agree that the evaluation of the external evaluator shall govern which courses are ready to be offered under this Agreement, subject to the ultimate approval of the faculty of Dominican. MKS shall develop and provide a curriculum that meets Dominican's academic expectations for a bachelor's degree, consistent with the recommendations of the external evaluator, to be presented to Dominican's faculty for its approval as appropriate.

**F. Academic Services**

It is the intent of the Parties that Dominican shall retain ultimate authority and control over the Academic Services of MKS-Dominican set forth below. It is further the intent of the parties that the Dean of MKS-Dominican shall retain administrative oversight of the services delineated below, subject to the authority of Dominican's Vice President for Enrollment Management or Vice President for Academic Affairs, as appropriate. The Dean and her/his designee shall be provided access to Dominican's database and to other necessary information to allow sufficient oversight and review of the Academic Services set forth below. As an educational services provider, MKS officials shall have access to said records upon request and consistent with the requirements of the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA").

**i. Admissions Criteria and Decisions**

(1) Except as provided below, Dominican's admissions standards and procedures in effect at the time of the admissions cycle shall apply to all applicants for admission to MKS-Dominican.

(2) Subject to the ultimate approval of Dominican, the Parties may establish admissions standards and procedures for MKS-Dominican that are in addition to those used by Dominican currently, as long as the standards are more selective than those used by Dominican.

(3) Dominican students may transfer from Dominican to MKS-Dominican through the MKS-Dominican admissions process.

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(4) MKS students may not transfer from MKS to MKS-Dominican without having been admitted through the MKS-Dominican admissions process. For the avoidance of doubt, the Parties explicitly agree that students who are currently enrolled in MKS at the time that MKS-Dominican begins offering courses will need to apply to MKS-Dominican and be admitted before they will be eligible to attend MKS-Dominican.

**ii. Tuition, Financial Aid Criteria and Decisions**

(1) **Income Share Agreement (ISA).** The Parties agree that MKS shall continue to offer an ISA option for students enrolling in the MKS-Dominican Computer Science degree programs at the San Francisco Location. Enrolled MKS-Dominican students at the San Francisco Location who wish to enter an ISA shall enter into said agreement with MKS directly, and MKS will be responsible for managing those agreements serviced through a third party. MKS shall notify Dominican of any such agreement allowing Dominican to appropriately credit the student's financial ledger. Student payments through the ISA option will be remitted to, and retained by, MKS.

(2) **Cash Payments.** The Parties agree that MKS-Dominican Computer Science students at the San Francisco Location who wish to pay using a cash option will make such payments directly to MKS. MKS shall notify Dominican of any such payments allowing Dominican to appropriately credit the student's financial ledger. Student cash payments will be remitted to, and retained by, MKS.

(3) **State and Federal Student Aid.** The Parties agree that if MKS-Dominican students secure federal or state financial aid pursuant to Dominican's participation in such programs, student will apply through Dominican's student aid office, and funds disbursed via these programs will be remitted directly to Dominican. If eligible students at the San Francisco Location have an unfunded tuition gap after application of governmental aid, they may secure financing through an ISA directly with MKS, subject to the process outlined in Section (1) or through cash payments as outlined in Section (2), consistent with the requirements of Title IV and the regulations pertaining to the total cost of attendance.

(4) Regardless of the source of tuition payments, or to which party payments are made, the parties agree that each shall remit to the other the appropriate funds due in accordance with the Semester Program Agreement then in effect as set forth in Section I(I) below.

(5) **Setting Tuition & Fees.** The Parties agree that Dominican shall set the tuition and fees for MKS-Dominican during the term of this Agreement, having consulted MKS no later than 90 days before the start of the term.

(6) **Eligibility of MKS-Dominican Students for Dominican Aid.** MKS-Dominican students enrolled at the San Francisco Location shall not be eligible for Dominican scholarships.

(7) **Eligibility of MKS-Dominican Students for Federal and State Aid** MKS-Dominican programs will be Title-IV eligible consistent with the eligibility of other Dominican programs; students enrolled in MKS-Dominican at either location will have access to federal and state financial assistance in a manner comparable to that of other Dominican students.

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(8) **Compliance with Title IV.** MKS shall ensure that it does not cause any violations of Title IV or its implementing regulations, including Section 487(a)(20) of the Higher Education Act (HEA), which prohibits Dominican from providing incentive compensation to any persons or entities for their success in securing student enrollments or the awarding of Title IV Higher Education Act program funds. MKS expressly recognizes that this prohibition applies to employees and agents of MKS in the same manner as it applies to employees of Dominican with regard to MKS-Dominican applicants and students at both locations.

**iii. Awarding and Recording Academic Credit and Credentials**

(1) Dominican shall retain sole authority for awarding and recording academic credit, issuing transcripts, award of academic credentials and retaining academic records consistent with its existing obligations under federal and state law and WSCUC's standards.

(2) MKS shall provide Dominican with any information necessary to satisfy Dominican's obligations.

**iv. Evaluating and Awarding Transfer Credit for Prior Course Work and Experiential Learning**

(1) Dominican shall retain sole authority for evaluating prior course work and experiential learning, including course work previously offered by MKS. Dominican may rely on the assessment of the external evaluation when rendering its determination. In anticipation of the Spring 2019 launch date of MKS-Dominican, Dominican shall develop a framework for evaluating prior course work and experiential learning by no later than August 1, 2018.

(2) Dominican shall retain sole authority for awarding academic credit for prior course work and experiential learning, including prior MKS course credit awarded by MKS prior to the commencement of MKS-Dominican.

**v. Reviewing and Approving Course Content and Curriculum**

(1) As set forth above in Section II.E.(iii), the faculty of Dominican shall approve MKS-Dominican's curriculum, course offerings, content, evaluation, grading, and shall retain all other customary oversight of the academic operations of MKS-Dominican, consistent with Dominican's current shared governance policies and procedures.

(2) MKS may propose changes to course content and curriculum in the degree granting program through Dominican's usual shared governance process, to ensure that the courses at the San Francisco location of MKS-Dominican remain current and in keeping with the needs of industry.

**vi. Offering of Courses**

(1) At least 30 days before the start of each term at either location (San Francisco or San Rafael), the Parties shall meet and confer to determine the appropriate number and type of courses to be offered based on enrollment and the academic needs of MKS-Dominican's students. This agreement shall be embodied in a Semester Program Agreement attached hereto.

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**vii. Registration**

- (1) Dominican's current registration process shall be used for all MKS-Dominican students.
- (2) Dominican shall retain responsibility for registering and tracking data pertaining to MKS-Dominican enrollment for the purposes of submission to IPEDS.
- (3) MKS shall provide Dominican with any information necessary to satisfy Dominican's obligations.

**viii. Instructional Facilities**

- (1) MKS shall ensure adequate instructional facilities at its San Francisco Location for offering MKS-Dominican courses including classroom, advising, library and office space that is sufficient for this purpose; technology and internet service; further, MKS shall ensure that its facilities comply with federal, state and local requirements including OSHA, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act.
- (2) Dominican shall ensure adequate instructional facilities at its San Rafael Location for offering MKS-Dominican courses including classroom, advising, library and office space that is sufficient for this purpose; technology and internet service; further Dominican shall ensure that its facilities comply with federal, state and local requirements including OSHA, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act.
- (3) Each party shall bear the cost of operating its respective instructional facility, unless otherwise specified explicitly in this Agreement.

**ix. Faculty**

- (1) The sole authority for hiring, evaluating and retaining faculty who teach in Dominican, expressly including MKS-Dominican, shall reside with Dominican except that each Party shall retain its current faculty on its current payroll and benefits programs and workers' compensation insurance. For avoidance of doubt, when Dominican assigns faculty members to teach general education courses at the San Francisco Location, those faculty members shall be on Dominican's payroll, benefits programs and workers' compensation insurance.
- (2) MKS shall have input on the search process, be included in the interview process and be consulted for a recommendation on hiring, evaluating and retaining faculty selected by Dominican who teach solely at MKS-Dominican's San Francisco Location.
- (3) Faculty members in MKS-Dominican shall report to the Dean of MKS-Dominican.
- (4) For the avoidance of doubt, it is expressly stated that all MKS-Dominican faculty are appointed to non-tenure-track positions except for those Dominican faculty who have already been appointed to tenure-track positions at Dominican by way of employment with non-MKS programs.

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(5) Dominican hereby represents that the collective bargaining agreement between Dominican and SEIU, Local 1021 does not apply to the MKS-Dominican San Francisco Location; however, all terms and conditions established therein, including the rate of compensation per course, shall apply to any courses taught by bargaining unit members at MKS-Dominican's San Rafael Location.

**x. Assessment of Student Learning**

(1) The faculty who teach in MKS-Dominican shall retain the authority to assess student learning in the courses of MKS-Dominican, consistent with the policies and procedures of Dominican.

(2) The faculty of MKS-Dominican shall assess student learning in a manner and frequency to be determined to be adequate by Dominican.

**xi. Student Handbooks, Policies and Complaint Processes at MKS-Dominican**

(1) Students at the MKS-Dominican San Francisco Location will be subject to Dominican's Student Handbook, policies and processes, modified by Dominican in its sole authority, as necessary for that location.

(2) Dominican shall retain the ultimate authority regarding student policies and process at MKS-Dominican, including policies pertaining to academic integrity.

(3) MKS shall employ adequate staff at the San Francisco Location for ensuring compliance with policies set forth in Dominican's Student Handbook (or comparable policies approved by Dominican for the San Francisco Location). These staff shall report to the Dean of MKS-Dominican who shall have the authority to hire, evaluate and retain these employees. These employees shall be on MKS's payroll and benefits plans and workers' compensation insurance.

(4) Students who have complaints about MKS-Dominican shall be directed to file a complaint pursuant to Dominican's stated procedures, which may be modified to suit the San Francisco Location upon approval of Dominican.

**G. Student Support Services**

It is the intent of the Parties that Dominican shall retain ultimate authority and control over the Student Support Services of MKS-Dominican set forth below. It is further the intent of the parties that the Dean of MKS-Dominican shall retain administrative oversight of the services delineated below, subject to the authority of Dominican. The Dean of MKS-Dominican and her/his designee shall be provided access to Dominican's database and to other necessary information to allow sufficient oversight and review of the Student Support Services set forth below. MKS officials shall have access to said records upon request and consistent with the requirements of the FERPA.



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**i. Academic Advising**

(1) Students enrolled in MKS-Dominican shall be eligible for academic advising as a service offered by designated MKS-Dominican Faculty.

(2) The nature and frequency of academic advising at the San Francisco Location of MKS-Dominican shall be consistent with that offered by Dominican at its San Rafael Location.

**ii. Residential Life**

(1) Students enrolled in MKS-Dominican at its San Francisco Location shall be eligible to reside in the residence halls operated by MKS.

(2) Students enrolled in MKS-Dominican at its San Rafael Location (for the computer science minor) shall be eligible to live in the residence halls offered by Dominican, subject to eligibility and procedures then in effect.

**iii. Student Life**

(1) The Dean of MKS-Dominican shall retain the ultimate authority over MKS-Dominican students at the San Francisco Location with respect to student orientations and trainings, campus conduct, code of conduct procedures, clubs and organizations, and student privileges.

(2) MKS shall hire and retain adequate staff to ensure sufficient administration of student life at MKS-Dominican at the San Francisco Location. MKS agrees to certify that any of its employees, independent contractors or agents who will be performing services for the benefit of MKS-Dominican (at either location), will have successfully completed a background check in accordance with Dominican's Background Check Policy then in effect. MKS further agrees to check the references and job history of any of its employees, independent contractors or agents who will be performing services for the benefit of MKS-Dominican (at either location). MKS agrees to comply with the federal Fair Credit Reporting Act and any applicable state laws in obtaining any references and background checks required under this contract. MKS further agrees that it will not assign any employees, independent contractors or agents to MKS-Dominican (at either location) who have not successfully completed a job history check, reference check and background check as required by this Agreement. MKS further agrees that it will immediately remove any of its employees, independent contractors or agents who are performing services for the benefit of MKS-Dominican who have not successfully completed a job history check, reference check and background check as required by this Agreement. Upon such removal, MKS shall notify Dominican of the action but, in the interest of privacy, need not specify the underlying conduct that gave rise to the removal.

(3) In order to oversee student life at the MKS-Dominican San Francisco Location, the parties shall designate an adequately trained MKS employee to serve in the following role(s), subject to the control of Dominican:

- a. A deputy Title IX Coordinator.

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- b. A deputy Section 504 Coordinator in order to administer disability accommodations and grievances
- c. A Clery administrator for the San Francisco Location and any related Clery-qualifying locations.

In the event there is a vacancy in any of the above positions, MKS shall reimburse Dominican for any services rendered to the San Francisco Location at the hourly rate then in effect for the Dominican employee providing such services.

(1) Dominican shall ensure that any legally required trainings for MKS-Dominican students, faculty and staff have been provided. To the extent that Dominican incurs additional user fees for these trainings, MKS shall reimburse these fees with 30 days of receiving an invoice.

(2) MKS-Dominican students at the San Francisco Location shall be eligible to use the facilities at Dominican's San Rafael Location, including Conlan Recreation Center.

(3) During the term of this Agreement, Dominican's Dean of Students shall use his or her best efforts to provide education and training for MKS-Dominican staff in order to allow these individuals to assume an increasing level of responsibility during the incubation period.

**H. Auxiliary Services**

The Parties agree that Dominican shall retain the ultimate authority for any auxiliary services, such as food service, financial aid processing, career and academic advising, pre-applicant screening, data gathering and analysis, and other functions not directly related to the awarding of academic credit. The Parties further agree that, to the extent that such auxiliary services are offered at the MKS-Dominican's San Francisco Location, MKS may have operational responsibility for these services as set forth below.

**i. Food Service**

(1) Unless otherwise agreed, MKS shall not offer food service at the MKS-Dominican San Francisco Location.

(2) If said food service is offered and requires a meal plan, MKS shall confer with Dominican regarding the fees for said meal plan and the administration of the account.

**ii. Financial Aid Processing**

(1) The Parties agree that all student financial aid shall be processed by Dominican, as set forth in section I.F.(ii) above, subject to the requirements of Title IV and implementing regulations, the California Student Aid Commission and WSCUC.

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**iii. Career Advising**

(1) Students enrolled in MKS-Dominican shall be eligible for career advising as a service offered by designated MKS-Dominican Faculty.

(2) The nature and frequency of career advising shall be consistent with that offered by Dominican at its San Rafael campus.

**iv. Recruiting & Marketing to Students**

(1) MKS shall be responsible for developing a Recruiting Plan for MKS-Dominican, subject to the oversight and approval of Dominican.

(2) This Recruiting Plan shall be established no later than May 31, 2018 in anticipation of a Spring 2019 launch date.

(3) MKS staff shall implement the Recruiting Plan, subject to Dominican's oversight and control.

(4) Neither party shall convey (explicitly or implicitly) that MKS is an independently accredited entity until WSCUC has explicitly granted such status through an official Commission action. Following the submission of the incubation materials on May 18, 2018, either party may state that MKS has applied for incubation status pursuant to WSCUC's Incubation Policy.

**v. Student and Exchange Visitor Program**

(1) Subject to approval by the federal government, a Dominican official shall serve as the Designated School Official for the Student and Exchange Visitor Program for any eligible MKS-Dominican students who are enrolled (or their dependents) pursuant to an F or M visa classification through or who are classified as a non-immigrant exchange visitor in the J visa classification.

**vi. Data Collection, Reporting, Retention, Protection, and Ownership**

(1) Dominican shall be responsible for data collection and reporting consistent with its obligations under federal and state law.

(2) MKS shall be responsible for providing Dominican with any MKS-Dominican data in its possession, custody or control at Dominican's request.

(3) Any data resulting from or related to MKS-Dominican shall be the sole property of Dominican.

(4) Both parties shall use commercially reasonable efforts to protect data resulting from or related to MKS-Dominican and shall further use commercially reasonable efforts to ensure privacy and security of data being maintained or transmitted and to prevent breaches of the same.

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**vii. Technology Services**

Attached as Exhibit A is a proposal for the Technology implementation known to the Parties as of the Effective Date (“**Technology Plan**”). As a result, both parties understand and agree that the Technology Plan will likely need to be updated and refined/or after the Effective Date. Any changes to the Technology Plan will require the written approval of both Parties. Any changes to the Technology Plan will be consistent with the following principles:

(1) Dominican shall be responsible for obtaining all licenses and consents necessary to use any third-party technology, software or hardware required by Dominican in order to provide MKS-Dominican including, without limitation, any licenses or consents required to be held by MKS as a result of MKS-Dominican.

(2) MKS shall reimburse actual and documented costs put towards technological improvements to hardware and systems upgrades necessary for the implementation of MKS-Dominican for both academics and operations (“Dominican Technology Improvements”). The initial cap on reimbursable costs is \$150,000. Both parties agree that all Dominican Technology Improvements implemented under the Technology Plan shall be necessary improvements for the incubation partnership.

(3) In circumstances where MKS resources are necessary to provide the Dominican Technology Improvements in excess of that set forth in Exhibit A, Dominican will provide MKS with a written estimate of the costs and obtain written consent prior to undertaking any such Dominican Technology Improvements. Dominican may, at its discretion, request payment in advance for any Dominican Technology Improvements.

(4) Upon installation, title to all Dominican Technology Improvements at the San Rafael Location shall transfer to Dominican.

**I. Financial Terms**

(1) Each Party shall remain responsible for its own operations, fees and expenses, unless explicitly set forth in this Agreement. Except as explicitly set forth in this Agreement, neither Party shall be authorized to incur expenses on behalf of the other without express written permission in advance.

(2) **Yearly Determination of Cost per Course.** No later than July 15th of each fiscal year, Dominican shall deliver to MKS:

a. Dominican’s faculty rate per unit negotiated during the preceding collective bargaining negotiations (“Dominican Negotiated Faculty Rate per Unit”).

b. A Blended Benefits Rate to be calculated as a weighted average of the percentage of faculty on Dominican payroll teaching MKS-Dominican courses at the San Francisco Location receiving part-time or full-time benefits (“MKS-Dominican San Francisco Blended Benefits Rate”).

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c. If requested by MKS, supporting documentation to justify the delivered Dominican Negotiated Faculty Rate per Unit and/or MKS-Dominican San Francisco Blended Benefits Rate.

No later than July 15th of each fiscal year, MKS shall deliver to Dominican:

a. The weighted average of instructor salaries teaching MKS-Dominican courses at the San Rafael Location (“MKS-Dominican San Rafael Average Instructor Salary”).

b. The benefits rate for instructors teaching MKS-Dominican courses at the San Rafael Location (“MKS-Dominican San Rafael Instructor Benefits Rate”).

c. If requested by Dominican, supporting documentation to justify the delivered MKS-Dominican San Rafael Average Instructor Salary and/or MKS-Dominican San Rafael Instructor Benefits Rate.

The Cost per Course for courses taught at MKS-Dominican at the San Francisco Location shall be determined by adding the Dominican Negotiated Faculty Rate per Unit and the product of multiplying the Dominican Negotiated Faculty Rate per Unit by the MKS-Dominican San Francisco Blended Benefits Rate. The resulting rate shall be multiplied the number of credits offered to determine the Cost per Course for MKS-Dominican courses taught at the San Francisco Location.

The Cost per Course for courses taught at MKS-Dominican at the San Rafael Location shall be determined by the MKS-Dominican San Rafael Average Instructor Salary per class and the percentage of time each Instructor spends towards instruction. The MKS-Dominican San Rafael Average Instructor Salary will be an average of the Make School instructor salaries who teach courses at the San Rafael campus. This Average Instructor Salary per class and the product of the MKS-Dominican San Rafael Average Instructor Salary and the MKS-Dominican San Rafael Instructor Benefits Rate will be added together. The resulting rate shall be the Cost per Class for MKS-Dominican courses taught at the San Rafael Location.

No later than July 30th of each year, the Parties shall enter in a 12-month binding Service Agreement incorporating the calculated Costs per Course.

(1) **Use of Semester Program Agreements.** Whereas the Parties cannot currently anticipate the number of courses to be offered through MKS-Dominican in each term and whereas this number may fluctuate depending on the needs of the students, the Parties agree that during the course of this Agreement the exact number of courses to be offered at the San Francisco Location and the number of courses to be offered at the San Rafael Location and the cost-sharing associated therewith shall be negotiated between the Parties no later than:

- a. May 1 for the Summer Term;
- b. July 1 for the Fall Term; and
- c. November 30th for the Spring Term.

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Said negotiations are to be reflected in addenda to this Agreement, hereinafter "Semester Program Agreements," the terms of which shall include:

- Number of courses and sections to be offered at the San Francisco Location;
- Number of courses and sections to be offered at the San Rafael Location;
- Appointment and assignment of faculty;
- Costs borne by each Party.

Other than the operational costs agreed to by this Agreement, no financial obligations pertaining to the Semester Program Agreements shall be imposed on either Party other than those arising from the number of courses taught and the applicable reimbursements computed with the applicable Cost per Course; Billing Terms for the Semester Program Agreements will be 30-day net terms and invoiced within 30 days of the end of each semester.

The Parties agree that each shall use its best efforts to deliver their respective MKS-Dominican services and functions in a manner that is financially equitable to both Parties and that the Semester Program Agreements shall be used to correct any financial inequities resulting from the prior term.

In the event any course that is not a 4-unit course is offered in a semester, the Semester Program Agreement shall incorporate an adjusted Cost per Course for any such course, pro-rated by the number of units. For example, if the Cost per Course in the applicable Year Long Service Agreement is \$10,000 and a 3-unit course is offered, the Cost per Course for the 3-unit [course/class] will be \$7,500.

In the event of a discrepancy or conflict between this Agreement or a Semester Program Agreement, this Agreement shall control.

**(1) Investments In Exchange for Administrative Costs Incurred  
Through May 31, 2018**

DUC will be offered the option to invest **Redacted** in MKS' current Series A Extension Financing. Upon MKS' receipt of executed financing documents and investment funds, DUC will receive **Redacted** of Series A Preferred stock with the same rights and at the same share price offered to all investors in this round of financing. For the avoidance of doubt, Dominican's Board of Trustees, by and through an authorized committee of the Board has reviewed this investment and has determined that the proposed transaction is a reasonable and prudent investment of Dominican's resources and Dominican is receiving fair value or market value for its investment.

**(2) Additional Administrative Costs**

Subject to the approval MKS' Board of Directors (the "Board"), DUC will be granted an option to purchase **Redacted** shares of the MKS' Common Stock (the "Option") at **Redacted** per share. Provided that no options shall vest after DUC ceases to provide services to MKS, the Option will vest and become exercisable at the rate of 1/3 of the total number of Option shares on June 1, 2019, 1/3 of the total number of Option shares on June 1, 2020, and 1/3 of the total number of Option shares on June 1, 2021. There is no guarantee that the Internal Revenue Service will agree with this value. The Option will be subject to the terms and conditions set forth in MKS' 2012 Stock Plan and the MKS' standard

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form of stock option agreement. DUC may exercise this option for up to 10 years after the final vesting date. For the avoidance of doubt, Dominican's Board of Trustees, by and through an authorized committee of the Board has reviewed this investment and has determined that the proposed transaction is a reasonable and prudent investment of Dominican's resources and Dominican is receiving fair value or market value for its investment.

As consideration for the Option, DUC agrees to reduce administrative service invoices by 40%. MKS agrees to make the following payments representing 60% of the invoiceable total to Dominican for administrative services, said payments to be invoiced at the end of the semester with 30 day net terms of the in the amount of:

1. Summer 2018: Redacted
2. Fall 2018: Redacted
3. Spring 2019: Redacted
4. Summer 2019: Redacted
5. Fall 2019: Redacted
6. Spring 2020: Redacted
7. Summer 2020: Redacted
8. Fall 2020: Redacted
9. Spring 2021: Redacted
10. Summer 2021: Redacted

In the event MKS does not grant the Option to DUC, MKS agrees to make the following payments to Dominican for administrative services representing 100% of the invoiceable total, said payments to be invoiced at the end of the semester with 30 day net terms.

**J. Compliance Obligations**

(1) Each party shall be responsible for complying with any applicable laws, regulations or compliance obligations.

(2) Each party shall be responsible for its own taxes as independent entities.

(3) Each party shall be responsible for obtaining the appropriate licenses, approvals, registrations, certifications or other approvals necessary to operate.

(4) Best efforts shall be made to share inform appropriate information as soon as practicable to ensure that all compliance obligations are met. Information shall be shared in a manner that respects the privacy of the individuals and on a need to know basis only, consistent with state and federal law and regulatory guidance.

(5) The Parties will keep all usual and proper records related to their respective performance under this Agreement, as required in accordance with generally accepted accounting principles for a minimum of three years from the end of the fiscal year unless a longer period is required under any applicable law or regulation.

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(6) In the event that Dominican determines that additional personnel time is needed to effectuate the terms of this Agreement, it shall provide MKS with at least sixty days' notice to hire an MKS staff or reimburse Dominican for additional staff time beginning on the sixty-first day.

**K.** (7) Each Party shall be responsible for responding to, curing and holding the other Party harmless for any data breaches occurring at its location, on its equipment, systems or resulting from the actions of its employees on its payroll. Each Party shall carry cyber-liability insurance as noted below. **Intellectual Property**

(1) Any rights in intellectual property created by MKS-Dominican students pertaining to coding, software or related inventions are owned by students unless agreed to in advance in writing between the student and the party.

(2) Any rights in intellectual property created by MKS-Dominican faculty on MKS's payroll are owned by MKS, except when such intellectual property is a contribution to a student project, in which case MKS's policies and agreements shall apply.

(3) Any rights in intellectual property created by Dominican faculty on Dominican's payroll who teach in MKS-Dominican are governed by existing Dominican policies.

(4) MKS shall grant Dominican a royalty-free, non-exclusive license to all documents or media owned by MKS related to the successful creation, delivery and implementation of the courses in the Computer Science minor and courses in the MKS-Dominican San Rafael Location, including but not limited to materials, instructional techniques, technical information, protocols, process information, learning objectives, strategies, curriculum, course syllabi, course descriptions, program descriptions, course materials, educational delivery methodologies, and academic support methodologies for the development and delivery of the MKS-Dominican programs. This paragraph shall survive the termination of this Agreement.

**L. Communication, Use of Name, Mark and Logo**

(1) The parties will develop a mutually agreed upon marketing plan for MKS-Dominican and all promotional activities related thereto, to be embodied in Exhibit B to this Agreement. The marketing plan shall address the use of name, logo, insignia, trademarks, service marks or trade names. The parties will communicate regularly to update the marketing plan and to coordinate all other ongoing marketing efforts. All promotional and marketing materials will adhere to the marketing plan.

(2) Neither Party shall make any such public announcement unless the contents of such public announcement are consistent with the approved marketing plan, except as may be required by applicable law or accreditation requirements, in which case the disclosing party shall allow the other party reasonable time in the circumstances to comment thereon in advance of such disclosure.

(3) Each party agrees to adhere to the other party's logo and branding guidelines.



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(4) Subject to the provisions of this Agreement, nothing in this Agreement will be construed to grant either party a license to use the other party's name, logo, insignia, trademarks, service marks or trade names for any other purposes, unless otherwise agreed to in writing by the other party.

(5) Promptly upon obtaining notice of any of the following events, each Party shall notify the other Party in writing, subject to all laws, rules, regulations and policies, should it become aware of any matter or circumstance concerning any of its faculty or professional staff which could involve negative publicity, illegal conduct, public safety or health concerns or other similar matters which could reasonably be expected to negatively affect the students, faculty, professional staff or visitors of the other Party.

**M. Term & Renewal of Agreement**

This Agreement is through June 30, 2022 shall be automatically extended for additional three-year periods from and after the expiration of the first and each succeeding three-year period, unless: one year or more prior to expiration of any three-year term either party gives written notice to the other party that it has elected not to extend the term of this Agreement. Notwithstanding the foregoing, each Semester Program Agreement issued hereunder may define its own term which may extend beyond the Term of this Agreement in which case the terms and conditions of this Agreement will survive and continue through the expiration date of each respective Program Agreement.

**N. State Authorization by the BPPE**

If required to do so, MKS must seek and obtain its own authorization from California's Bureau of Private Postsecondary Education (BPPE) prior to becoming a separately accredited institution.

**O. Employees Responsible for Implementation of Agreement**

The Parties agree that each of them shall develop procedures and identifies the locus of responsibility for negotiating and monitoring this Agreement and the Semester Program Agreements.

The Parties agree that they shall mutually establish procedures for periodically evaluating the efficacy and quality of services and the outcomes of the contractual relationship established by this Agreement.

**P. Teach Out Procedures Upon Termination of Relationship**

In the event that this Agreement is terminated and a teach out plan is required, Dominican, as the accredited entity, shall take all reasonable steps to ensure the teach-out of any students then enrolled at the time of the termination of this Agreement. During the period of the teach-out, MKS shall grant Dominican a royalty-free, non-exclusive license to all documents or media owned by MKS related to the successful creation, delivery and implementation of academic programs, know-how, data and other information, including but not limited to materials, instructional techniques, technical information, protocols, process information, learning objectives, strategies, curriculum, course syllabi, course descriptions, program descriptions, course materials, educational delivery methodologies, academic support methodologies, enrollment and financial projections for the development, delivery

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and marketing of the MKS-Dominican programs. The Parties shall meet and confer to develop a mutually agreeable cost-sharing in the event of teach-out.

Dominican may, but is under no obligation to, offer employment to MKS-Dominican faculty or staff member upon conclusion of their employment with MKS-Dominican, unless an independent contractual requirement is present.

**Q. Exclusivity**

While this Agreement is in effect, MKS will not enter into any incubation relationship with any other entity, nor shall it seek regional accreditation from any other entity than WSCUC.

From the Effective Date of this Agreement until at least sixty days following WSCUC's approval of the incubation application, MKS shall refrain from entering into any agreement with any other post-secondary institution in the United States where such agreement has the purpose or effect of allowing the post-secondary institution to develop (or offer for the first time) a minor in a comparable program or discipline.

**III. Additional Contractual Terms**

**A. Termination of Relationship**

Following expiration or termination of this Agreement, both parties agree to use all reasonable efforts to cease services, discontinue usage of use each other's trademarks, names, and logos, and from taking any action that might cause third parties to infer that the business relationship in this Agreement continues to exist. Promptly following the expiration or termination of this Agreement, the Parties will inform each other in writing of any incomplete work remaining, outstanding deliverables, or outstanding costs or liabilities as of such date. Except as otherwise provided, the Parties agree to work together in good faith to promptly finalize such matters within thirty (30) days of expiration/termination; provided, however, that if a party requires additional time, the parties will exercise good faith to agree on a reasonable extension of time. Notwithstanding anything herein to the contrary, the parties' obligations hereunder shall survive the expiration or termination of this Agreement to the extent (and only to the extent) required to allow then-matriculated MKS-Dominican students to complete their courses within the time period in which such courses were anticipated by the Parties for completion.

**i. Without Cause**

1. Either Party may terminate this Agreement or any Schedule attached hereto for any reason with one-year prior written notice to the other Party.

2. Termination of an individual Semester Program Agreement pursuant to this Section shall not affect the termination of this Agreement.

**ii. For Cause Due to Breach**

A party may terminate this Agreement or any or all Exhibits and have recourse to any other right or remedy under the Agreement or under law and/or equity against the other party for one or more of the following events:

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- A material breach of any provision of the Agreement where such breach remains uncured for thirty (30) days following receipt of written notice;
- Applicable licenses, certificates, permits, authorizations, or other legal credentials are revoked;
- A voluntary proceeding in bankruptcy;
- Dissolution or liquidation; or
- Any assignment for the benefit of creditors.

Any party subject to any of the foregoing events shall provide the other party with immediate notice in writing of any of the aforesaid events.

**iii. Termination For Reasons of Compliance**

If this Agreement is in conflict with regulatory changes, both Parties agree to seek an alternative remedy or, if one is not found, either Party may terminate this Agreement with six months prior written notice.

**iv. Termination Due to WSCUC Rejection**

If this Incubation Relationship is not approved by WSCUC within one year of this Agreement, either Party may terminate this Agreement with six months prior written notice.

**B. Insurance**

All insurance policies in force at the date hereof with respect to each Party: (i) insure against such risks, and are in such amounts, as are reasonable, considering the insured Party's properties, businesses and operations; and (ii) are in full force and effect and all premiums due thereon have been paid.

**Specific Obligation**

- (i) Each Party shall maintain, during the Term, and for a period of two (2) years after the expiration or termination of this Agreement, insurance coverage as follows:
  - a) Commercial general liability at least in the amount not less than Five Million Dollars (\$1,000,000.00) per occurrence.
  - b) Auto Liability - \$5 million occurrence/combined single limit, for "any autos" including owned, leased, non-owned, and hired vehicles
  - c) Employee Dishonesty/Crime - \$1 million per claim. Include theft of property, monies and securities of client, its employees, students, faculty, visitors and guests.
  - d) Workers' Compensation – statutory benefits, \$1 million employer's liability, and \$1 million occupational disease. Applicable in state where work is performed.

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- e) Sexual Misconduct/Abuse Liability - \$5 million occurrence. If included in CGL must be specifically stated on certificate of insurance.
- f) Cyberliability. - \$3 million occurrence.
- g) Educator's Legal Liability – equal to the amount carried by Dominican.
- h) Employment Practices Liability Insurance - \$5 million.
- i) Directors & Officers Insurance. \$5 million.

MKS's insurance shall include Dominican, trustees, officers and payrolled Dominican employees as additional insureds within thirty (30) days after the Effective Date. Each Party's insurance shall be written to cover claims incurred, discovered, manifested, or made during or after the Term.

- (i) Each Party shall furnish a certificate of insurance evidencing such coverage to the other within thirty (30) days after the Effective Date. Thereafter, a Party shall provide thirty (30) days advance written notice to the other Party of any cancellation or material adverse change to such insurance.
- (ii) MKS's insurance shall be primary coverage and any insurance Dominican may purchase shall be excess and non-contributory. The minimum amounts of insurance coverage required herein shall not be construed to impose any limitation on MKS's indemnification obligations under this Agreement.
- (iii) Each Party shall at all times comply in all material respects with all statutory workers' compensation and employers' liability requirements covering its employees on its payroll with respect to activities performed under this Agreement.

**C. Indemnity**

MKS hereby agrees to indemnify Dominican and its trustees, officers, employees and agents and the heirs, successors and assigns of each of the foregoing (each a "Dominican Indemnified Party") against and agrees to hold each of them harmless from any and all claims, damages, losses, liabilities and expenses (including reasonable expenses of investigation and reasonable attorneys' fees and expenses in connection with any action, suit or proceeding) ("Damages") incurred or suffered by any Dominican Indemnified Party arising out of any negligence, gross negligence and gross misconduct by MKS, its directors, officers, employees (on its payroll) and agents and the, successors and assigns of each.

Dominican hereby agrees to indemnify MKS and its directors, officers, employees (on MKS's payroll) and agents and the, successors and assigns of each of the foregoing (each a "MKS Indemnified Party") against and agrees to hold each of them harmless from any and all Damages incurred or suffered by any MKS Indemnified Party arising out of any negligence, gross negligence and gross misconduct by Dominican, its directors, officers, employees (on its payroll) and agents and the, successors and assigns of each.

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**D. Representations and Warranties of MKS**

MKS represents and warrants to Dominican as of the date of this Agreement as follows:

**1. Authority**

MKS has the necessary corporate power and authority to own, operate, lease and otherwise to hold and operate its assets and properties and to carry on its business as now being conducted, to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by MKS and the consummation by MKS of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of MKS are necessary for MKS to authorize this Agreement or for MKS to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by MKS and constitutes a legal, valid and binding obligation of MKS, enforceable in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency or similar laws affecting creditors' rights generally or by the application of general equitable principles.

**2. Organization and Qualification**

MKS is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. MKS is duly qualified to conduct its business, and is in good standing, in each jurisdiction where the character of its properties owned, operated or leased or the nature of its activities makes such qualification necessary, except for such failures which would not reasonably be likely to have a material adverse effect on MKS-Dominican.

**3. Organizational Documents**

MKS has delivered to Dominican correct and complete copies of the certificate of incorporation and bylaws of MKS (as amended through the date of this Agreement). MKS is not in default under or in violation of any provision of its certificate of incorporation or bylaws.

**4. No Conflict; Required Filings and Consents**

The execution and delivery of this Agreement by MKS does not, and the performance by MKS of its obligations under this Agreement will not, with or without the giving of notice or the lapse of time or both, (i) conflict with or violate the organizational documents of MKS, (ii) conflict with or violate any Law applicable to MKS or by which any of its properties or assets is bound or affected result in any breach of or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any liens, security interests, equitable interests, rights of first refusal, pledges, agreements, claims, charges, encumbrances or restrictions of any kind (collectively, "Encumbrances") on any of the properties or assets of MKS pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which MKS or any of its properties or assets is bound or affected, including without limitation, any MKS material contract, except, in the case of clauses (ii) and (iii) above, for any such conflicts, violations, breaches, defaults, alterations or other occurrences that (A) would not prevent or delay consummation of any of the transactions contemplated by this Agreement

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in any material respect, or otherwise prevent MKS from performing its obligations under this Agreement in any material respect, or (B) would not reasonably be likely to have a material adverse effect on MKS-Dominican.

The execution and delivery of this Agreement by MKS does not, and the performance by MKS of this Agreement will not, require any consent, approval, authorization or permit of, or filing with or notification to, any person or entity, including any court, administrative agency, commission or other governmental or regulatory authority, domestic or foreign (each a "Governmental Entity"), or under any MKS material contract, except as has been obtained and except where failure to obtain such consent, approval, authorization or permit or to file such notification would not have a material adverse effect on MKS-Dominican.

The execution and delivery of this Agreement by MKS does not, and the performance by MKS of its obligations under this Agreement will not, with or without the giving of notice or the lapse of time or both, (i) conflict with or violate the organizational documents of MKS, (ii) conflict with or violate any Law applicable to MKS or by which any of its properties or assets is bound or affected, result in any breach of or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance on any of the properties or assets of MKS pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which MKS or any of its properties or assets is bound or affected, including under any MKS material contract, except, in the case of clauses (ii) and (iii) above, for any such conflicts or violations that (A) would not prevent or delay consummation any of the transactions contemplated by this Agreement in any material respect, or otherwise prevent MKS from performing its obligations under this Agreement in any material respect, or (B) would not reasonably be likely to have a material adverse effect on MKS-Dominican.

The execution and delivery of this Agreement by MKS does not, and the performance by MKS of this Agreement will not, require any consent, approval, authorization or permit of, or filing with or notification to, any person or entity, including any Governmental Entity, or under any MKS material contract, except as has been obtained and except where failure to obtain such consent, approval, authorization or permit or to file such notification would not have a material adverse effect on MKS-Dominican.

**5. Absence of Litigation**

There are no claims, actions, suits, arbitrations, grievances, summonses, subpoenas, inquiries or proceedings of any nature, civil, criminal, regulatory or otherwise, in law or equity ("Actions") pending or, to the knowledge of MKS, threatened, against MKS or any MKS Subsidiary or any of their respective properties before any Governmental Entity, which are reasonably likely to have a MKS Material Adverse Effect. Neither MKS nor any MKS Subsidiary has filed for relief in bankruptcy or had entered against it an order for relief in bankruptcy.

**6. Licenses and Permits; Compliance with Laws**

As necessary to effectuate the terms of this Agreement, MKS is in compliance with all Laws and regulations applicable thereto, and any Laws and regulations related to or administered by any entity or organization, whether governmental, government chartered, tribal, private, or quasi-private,

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that engages in granting or withholding licenses, permits, authorizations, certifications, consents, accreditations or similar approvals to institutions of higher education or post-secondary institutions in accordance with standards relating to the performance, operation, financial condition, or academic standards of such institutions (collectively, "MKS Education Requirements"), in each of the foregoing cases except for such failures which would not be reasonably likely to have a material adverse effect on MKS-Dominican.

Subject to the approval of WSCUC and the federal Department of Education, MKS has all material licenses, permits, authorizations, certifications, and similar approvals necessary to conduct the business and operations of MKS, in the manner and to the full extent that they are now being conducted and in accordance with applicable MKS Education Requirements, including any permit or authorization required for MKS or its Affiliates or their employees or agents to recruit students in any state where they engage employees or agents to recruit students (collectively, the "MKS Educational Approvals"). No proceeding for the suspension or cancellation of any MKS Educational Approval is pending or, to the knowledge of MKS threatened. MKS has not received any notice that any MKS Educational Approval will not be renewed, and MKS has no knowledge of any basis for non-renewal. MKS has no any knowledge of any pending investigation, audit, or review of any MKS Educational Approvals.

MKS has not participated in Title IV Programs as an eligible institution, or as a Third-Party Servicer.

MKS is not, and does not have any principal or Affiliate (as those terms are defined in 34 C.F.R. part 85) that is, debarred or suspended under Executive Order (E.O.) 12549 (3 C.F.R., 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 C.F.R. part 9, subpart 9.4, or engaging in any activity that is cause under 34 C.F.R. 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 C.F.R., 1986 Comp., p. 189) or the FAR, 48 C.F.R. part 9, subpart 9.4.

To the knowledge of MKS, MKS does not employ nor has employed, any individual who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use or expenditure of federal, state, or local government funds or has been administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds.

**7. Brokers**

No broker, finder or investment banker or other person or entity is directly or indirectly entitled to any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the transactions with Dominican contemplated by this Agreement based upon arrangements made by or on behalf of MKS.

**8. Taxes**

MKS has filed all Tax Returns (as defined herein) required to be filed, and have paid all federal and material other Taxes levied or imposed on its or its properties, income or assets or otherwise due

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as reflected on such Tax Returns unless such unpaid Taxes and assessments are being contested in good faith (and reserves with respect thereto are being maintained in accordance with GAAP).

**9. Properties; Assets**

The assets and properties of MKS are in good operating condition and repair (ordinary wear and tear excepted), and are sufficient to conduct the businesses and operations of MKS as contemplated under this Agreement.

**10. Subsidiaries and Affiliates**

MKS does not have any controlled subsidiaries or other controlled Affiliates.

**E. Representations and Warranties of Dominican**

Dominican represents and warrants to MKS as of the date of this Agreement as follows:

**1. Authority**

Dominican has the necessary power and authority to own, operate, lease and otherwise to hold and operate its assets and properties and to carry on its business as now being conducted, to enter into this Agreement to perform its obligations hereunder and to consummate the transactions contemplated hereby.

The execution and delivery of this Agreement by Dominican and the consummation by Dominican of the transactions contemplated hereby have been duly and validly authorized by Dominican's Board of Trustees, as that authority has been delegated. Subject to the approval of WSCUC and the Department of Education, no other applicable governing body, and no other proceedings on the part of Dominican are necessary for Dominican to authorize this Agreement or for Dominican to consummate the transactions contemplated hereby.

This Agreement has been duly executed and delivered by Dominican and constitutes a legal, valid and binding obligation of Dominican, enforceable in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency or similar laws affecting creditors' rights generally or by the application of general equitable principles.

**2. Organization and Qualification**

Dominican is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California. Dominican is duly qualified to conduct its business, and is in good standing, in each jurisdiction where the character of its properties owned, operated or leased or the nature of its activities makes such qualification necessary, except for such failures which would not reasonably be likely to have a Material Adverse Effect.

**3. No Conflict; Required Filings and Consents**

The execution and delivery of this Agreement by Dominican does not, and the performance by Dominican of its obligations under this Agreement will not, with or without the giving of notice or the



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lapse of time or both, (i) conflict with or violate the organizational documents of Dominican, (ii) conflict with or violate any Laws applicable to Dominican or by which any of its properties or assets is bound or affected or (iii) result in any breach of or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of Encumbrances on any of the properties or assets of Dominican pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Dominican or any of its properties or assets is bound or affected.

**4. Absence of Litigation**

There are no Actions pending or, to the knowledge of Dominican, threatened against Dominican or any of its respective properties before any Governmental Entity, which are reasonably likely to have a material adverse effect on MKS-Dominican.

**5. Licenses and Permits; Compliance with Laws**

Subject to the approval of WSCUC and the federal Department of Education, as necessary to effectuate the terms of this Agreement, Dominican is in compliance with all Laws and accreditation requirements applicable thereto, including the provisions of the Title IV Programs, any regulations implementing or relating to the Title IV Programs, and any Laws and accreditation requirements related to or administered by any entity or organization, whether governmental, government chartered, tribal, private, or quasi-private, that engages in granting or withholding licenses, permits, authorizations, certifications, consents, accreditations or similar approvals to institutions of higher education or post-secondary institutions in accordance with standards relating to the performance, operation, financial condition, or academic standards of such institutions (collectively, “Dominican Education Requirements”), including any Laws and accreditation requirements related to any form of student financial assistance, in each of the foregoing cases except for such failures which would not be reasonably likely to have a Material Adverse Effect.

Subject to the approval of WSCUC and the federal Department of Education, Dominican has all material licenses, permits, authorizations, certifications, accreditations and similar approvals necessary to conduct the business and operations of Dominican, in the manner and to the full extent that they are now being conducted and in accordance with applicable Dominican Education Requirements, including any permit or authorization required for Dominican or its employees or agents to recruit students in any state where they engage employees or agents to recruit students (collectively, the “Dominican Educational Approvals”), (ii) no proceeding for the suspension or cancellation of any Dominican Educational Approval is pending or, to the knowledge of Dominican, threatened, (iii) Dominican has not received any notice that any Dominican Educational Approval will not be renewed, and Dominican has no knowledge of any basis for non-renewal and (iv) Dominican has no knowledge of any threatened or pending investigation, audit, or review of any Dominican Educational Approvals.

Subject to the approval of WSCUC and the federal Department of Education, Dominican has all approvals required pursuant to its policies and procedures to offer any initial MKS-Dominican Programs and, to the best of Dominican’s knowledge and belief, Dominican has all licenses, authorizations and other necessary approvals from the state, WASC and ED to offer any initial MKS-Dominican Programs on the terms set forth in this Agreement.

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Dominican is certified by ED as an eligible institution under the Title IV Programs and is a party to, and in material compliance with, a valid program participation agreement with ED respecting its participation in the Title IV Programs, (ii) Dominican is in material compliance with any and all laws and regulations relating to the Title IV Programs and (iii) Dominican has no knowledge of any threatened or pending investigation, audit, or review of its participation in any of the Title IV Programs.

To Dominican's knowledge, no person who exercises substantial control over Dominican (as the term "substantial control" is defined under 34 C.F.R. § 600.21(a)(6) or § 668.174(c)) or any member or members of that person's family (as the term "family" is defined in 34 C.F.R. § 668.174(c)(4) or § 600.21(f)), alone or together, exercises or has exercised, substantial control over another institution or a Third-Party Servicer that owes a liability for a violation of any requirement of the Title IV Programs and is not repaying such liability in accordance with an agreement with ED.

Dominican has not filed for relief in bankruptcy or had entered against it an order for relief in bankruptcy.

To Dominican's knowledge, Dominican does not employ in a capacity that involves the administration of the Title IV Programs or receipt of funds under the Title IV Programs any individual who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use or expenditure of federal, state, or local government funds or has been administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds. To Dominican's knowledge, Dominican does not contract with, an institution or Third-Party Servicer that (i) has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of federal, state, or local government funds, (ii) has been convicted of, pled nolo contendere or guilty to, a crime involving the acquisition, use or expenditure of federal, state, or local government funds or (iii) has been administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds.

Dominican does not currently contract with a Third-Party Servicer to provide any services in connection with the processing or administration of Dominican's financial assistance programs, including the Title IV Programs.

Dominican is not, and does not have any principal or Affiliate (as those terms are defined in 34 C.F.R. part 85) that is, debarred or suspended under Executive Order (E.O.) 12549 (3 C.F.R., 1986 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 C.F.R. part 9, subpart 9.4, or engaging in any activity that is cause under 34 C.F.R. 85.305 or 85.405 for debarment or suspension under E.O. 12549 (3 C.F.R., 1986 Comp., p. 189) or the FAR, 48 C.F.R. part 9, subpart 9.4.

**6. Brokers**

No broker, finder or investment banker or other person or entity is directly or indirectly entitled to any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the transactions with Dominican contemplated by this Agreement based upon arrangements made by or on behalf of Dominican.

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**7. Properties; Assets**

Subject to the Dominican Technology Improvements required by this Agreement, the assets and properties of Dominican, taken as a whole, are in good operating condition and repair (ordinary wear and tear excepted), and are sufficient to conduct the businesses and operations of Dominican as set forth in this Agreement.

**8. Subsidiaries and Affiliates**

Dominican does not have any controlled subsidiaries or other controlled Affiliates (“Dominican Subsidiaries”).

**F. Choice of Law**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California (excluding the choice of law principles thereof).

**G. Amendment; Waiver**

No amendment or waiver of any provision of this Agreement, or consent to any departure by either party from any such provision, shall be effective unless the same shall be in writing and signed by the parties and, in any case, such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**H. Severability**

Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

**I. Confidential Information; Publicity**

Each party acknowledges and agrees that, in connection with this Agreement, it may obtain or has already obtained Confidential Information of the other.

“Confidential Information” shall mean information of a confidential or proprietary nature, in any form or medium, regardless of whether such information is marked as confidential, including information disclosed by MKS to Dominican or vice versa, whether or not it was developed by the disclosing party or acquired through a license, agreement or otherwise, which is not generally known to the public, including, without limitation, any research program, research plans, data, know-how, trade secrets, concepts, discoveries, methods, results, information regarding sources of supply, business plans, partners, clients, potential agreements, the existence, scope and activities of any research, development, marketing, or other projects, and other similar information with like characteristics; provided, however, that “Confidential Information” shall not include information that each of MKS, on the one hand, and Dominican, on the other hand, can demonstrate: (i) was independently developed by it or any of its Affiliates without reference to the Confidential Information of the other or any of the other’s Affiliates; (ii) is or becomes generally available to the public through

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no fault of its own or any of its Affiliates; (iii) was lawfully obtained by it or any of its Affiliates without any obligation of confidentiality; or (iv) was known by it or any of its Affiliates prior to receipt thereof. In the event that each of MKS, on the one hand, and Dominican, on the other hand, or any of their Affiliates, becomes legally compelled, or a third party (including a government agency) seeks to compel it or any of its Affiliates, to disclose any Confidential Information of the other or any of the other's Affiliates, the compelled party shall, and if its Affiliate is a compelled party shall cause such Affiliate to, provide immediate notice of the foregoing to the other party so that the other party or its Affiliate may seek a protective order or other appropriate remedy, and the compelled party shall, and if its Affiliate is a compelled party shall cause its Affiliate to, use reasonable efforts to preserve the confidentiality of any such Confidential Information, including, without limitation, by cooperating with the other party or its Affiliate, to obtain a protective order or other appropriate remedy.

Each Party (i) shall protect the Confidential Information of the other using the same degree of protection that it uses for its own confidential information of a similar nature, but in no event shall it use less than a reasonable degree of protection, to prevent any unauthorized disclosure or use of such Confidential Information; (ii) shall not use such Confidential Information for any purpose other than the purposes contemplated by this Agreement; (iii) shall not disclose such Confidential Information to any third party, except as authorized by this Agreement or authorized by the other in advance in writing; (iv) shall limit dissemination of such Confidential Information to those individuals who have a need to know or use such Confidential Information; and (v) shall promptly advise the other of any information it has or receives of any actual or potential unauthorized use or disclosure of Confidential Information of the other Party.

Each Party may disclose Confidential Information to its directors, officers, stockholders, employees and trustees and those of its Affiliates and to its legal, accounting and financial advisors who are under a professional or other obligation to maintain such Confidential Information in confidence, in each case on a need-to-know basis and shall cause each of the foregoing to comply with the provisions of this Section. Each Party may disclose the Confidential Information of the other to those consultants and independent contractors, [financing (or potential financing) sources and their advisors, business partners and potential business partners and their advisors] who have entered into appropriate confidentiality agreements with terms no less restrictive than this Agreement and shall ensure compliance with the terms of such agreements; provided, however, in the event that a Party determines that it is unable to secure any such confidentiality agreement from any of the foregoing persons or entities' or from any accrediting agency, it may seek the approval from the other to make such disclosure without the benefit of such agreement, which approval shall be granted if reasonable in light of the relevant facts and circumstances (which may include a confidentiality agreement on other terms).

If Dominican provides MKS with any legally confidential information including but not limited to confidential personnel information or "personally identifiable information" from student education records as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and the implementing regulations in Title 34, Part 99 of the Code of Federal Regulations ("FERPA"), the School hereby certifies that collection of this information from Dominican is necessary for the performance of MKS's duties and responsibilities on behalf of Dominican under this Agreement. MKS further certifies that it will maintain the confidentiality of this information and that it will not re-

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disclose confidential personnel information or personally identifiable information pursuant to FERPA or by other State and Federal laws.

If either Party experiences a security breach concerning any information covered by this Agreement, and such breach is covered by California or federal law, then the breached Party will:

- a. fully comply with obligations under the applicable law,
- b. immediately notify the other Party and fully cooperate with the other Party in carrying out obligations under any applicable law. It is expressly agreed by the Parties that the provisions of this Section shall survive the termination, for any reason, of this Agreement and shall be binding on each Party, its successors and assigns, for the benefit of the other Party and its affiliates, successors and assigns.

**J. Binding Effect; Third Party Beneficiaries**

This Agreement shall inure to the benefit of, and be binding upon, Dominican and MKS, and their respective successors and permitted assigns. The provisions of this Agreement are for the sole purpose of setting forth the respective rights and obligations of the parties hereto. Except as set forth herein with respect to indemnification, the parties agree that none of the provisions of this Agreement are intended for the benefit of any third party and that no such third party shall have the right to enforce the provisions of this Agreement.

**K. Assignment**

This Agreement and the rights of each party hereunder may not be assigned without the prior written consent of the other party (which consent may be withheld in the applicable entity's sole discretion).

**L. Notices**

All notices and other notifications given or made pursuant to this Agreement shall be in writing, addressed to the receiving party at the address set forth below (as it may be modified by proper notice) and shall be effective (a) when delivered or tendered in person and a written receipt confirms such delivery; (b) if telecopied, when receipt confirmed; (c) if sent by certified mail (return receipt requested), postage pre-paid, five business days after being so sent; or (d) if sent by reputable overnight courier, postage prepaid, two business days after being so sent:

If to Dominican:

Dominican University of California  
Attention: Mary B. Marcy and Nicola Pitchford  
Guzman Hall – 2<sup>nd</sup> Floor  
50 Acacia Avenue  
San Rafael, CA 94901

With copy to:

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Natasha J. Baker  
Hirschfeld Kraemer LLP  
505 Montgomery Street, 13<sup>th</sup> Floor  
San Francisco, CA 94111

If to MKS:

Make School Inc.  
Attention: Jeremy Rossman  
1547 Mission Street  
San Francisco, CA 94103

**M. Entire Agreement**

This Agreement (including the documents referred to herein) constitute the entire agreement among the parties and supersedes any prior understandings, agreements, or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

**N. Headings**

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

**O. Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic or pdf copies shall be deemed to be originals.

**P. No Agency or Joint Venture**

The parties acknowledge and agree that they are dealing with each other as independent contractors and this Agreement does not create a partnership, joint venture or agency relationship. Neither party shall act or have the power to act for the other in any respect whatsoever. The relationship between Dominican and MKS shall be and shall be deemed to be that of independent contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement. Neither party is authorized to bind the other in any respect whatsoever. The parties shall have no authority to, and covenant that they will not attempt to: (i) accept offers in the other party's name, (ii) enter into or modify any contract on behalf of the other party or (iii) make for enlarge any representations, warranties or guaranties of the other party.

**Q. Dispute Resolution**

All controversies, disputes, disagreements or claims arising out of or relating to this MOU, including any question regarding its existence, interpretation, validity or termination, shall be referred to and definitively resolved by mandatory binding arbitration. Arbitration shall be conducted in San

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Francisco and shall be governed by and apply California law. Arbitration shall be conducted in accordance with JAMS' Comprehensive Arbitration Rules and Procedures, by a single arbitrator who shall have not represented either University or any affiliate of either University in any capacity. Any decision rendered by the arbitrator shall be final and binding on the Universities, shall not be subject to de novo judicial review, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall have the authority to require the losing University to pay all costs associated with such arbitration, including attorneys' expenses and fees, expert fees, and the expenses and fees of the arbitrator. It is the express intent and understanding of the Universities that each shall be entitled to enforce its respective rights under any provision hereof through specific performance, in addition to recovering damages caused by a breach of any provision hereof, and to obtain any and all other equitable remedies as may be awarded by the arbitrator. Notwithstanding the above, each University shall have the right to seek provisional remedies from a court of competent jurisdiction. The provisions of this Section shall survive the termination of this Agreement.

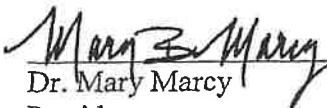
**R. Acknowledgment**


Each party acknowledges and represents that, in executing this Agreement it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

I have reviewed the foregoing. I understand and agree to the same.

Date: 5/29/18

Date: 5/29/18

By:   
Dr. Mary Marcy  
President  
Dominican University of California

By:   
Jeremy Rossmann  
CEO  
Make School, Inc.