

From: [Renner, Jamie](#)
To: jacob_seitz@emerson.edu
Cc: [Mishaan, Jessica](#)
Subject: Your Public Records Request
Date: Friday, July 31, 2020 10:09:10 AM
Attachments: [7-31-20 PRA Response re 7-17-20 MC documents.zip](#)

Mr. Seitz:

Attached are further documents responsive to your Public Records Request regarding Marlboro College. As follow up to my correspondence of July 20, they consist of documents provided to our Office by Marlboro College on July 17 (within the last 10 business days).

Please note, pursuant to 1 V.S.A. 317(c)(7), information reflecting the personal finances of Marlboro College employees and donors has been redacted from these documents.

If you feel that any redaction has been made in error, you may appeal directly to Deputy Attorney General Joshua Diamond.

Regards,
Jamie

Jamie Renner
Assistant Attorney General
Office of the Vermont Attorney General
109 State Street, Montpelier, VT 05609
Dir: 802-828-5947

AGREEMENT FOR ASSET EXCHANGE IN SUPPORT OF MARLBORO INSTITUTE

This agreement (the “**Agreement**”), effective June 26, 2020 (“**Effective Date**”), is entered into by and between The Corporation of Marlboro College, located at 2582 South Road, Marlboro, Vermont (“**Marlboro**”) and Emerson College, located at 120 Boylston Street, Boston, Massachusetts (“**Emerson**”) (each herein referred to individually as a “**Party**,” or collectively as the “**Parties**”).

PREAMBLE:

WHEREAS Marlboro is a Vermont public benefit corporation offering degree programs in the liberal arts and interdisciplinary studies;

WHEREAS Emerson is a Massachusetts charitable educational corporation offering degree programs in the liberal arts and interdisciplinary studies;

WHEREAS Marlboro’s deep commitment to an educational model focused on clear and compelling writing, project-based skills and successful cooperative work is compatible with and complements Emerson’s strong programs that similarly focus on developing the forgoing skills and work of its students;

WHEREAS the Parties desire to celebrate and continue Marlboro’s legacy by integrating its educational model into Emerson, as set forth herein by, among other things, the transfer to Emerson of Marlboro’s academic programs, endowment and other assets in exchange, in part, for Emerson’s commitment to continue the Marlboro Promise, provide appropriate education to Marlboro students and employment of Marlboro faculty, all as more fully described herein;

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the Parties hereby agree to the following:

1. **Purpose; Governance**

A. *Marlboro Institute.* As more fully described below, the Parties are entering into this Agreement for the purpose of continuing the development and enhancement of Emerson’s liberal arts programs through the transfer to Emerson of certain faculty and students to Emerson’s own Institute for Liberal Arts and Interdisciplinary Studies (the “**Emerson Institute**”) and the School of the Arts, the integration of Marlboro’s liberal arts principles as embodied in the Marlboro Promise, renaming the Emerson Institute as the Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College (the “**Institute**”), and continuing the Institute as a distinct division within Emerson. The Parties have executed a Term Sheet effective as of November 4, 2019 (the “**Term Sheet**”), and the Parties agree that this Agreement supersedes the Term Sheet in its entirety.

B. *Marlboro Corporation.* The Parties acknowledge that after the Closing Date (as hereafter defined) Marlboro will remain a legally separate entity unaffiliated with Emerson in

order to fully conclude its affairs, including the granting of Marlboro degrees through August 2020.

C. *Marlboro Trustees.* Emerson agrees to appoint, for a three (3) year term, two (2) new members of the Emerson Board of Trustees from among those current members of the Marlboro Board of Trustees who wish to be considered for such appointment (such Trustees wishing to be considered, being the “**Eligible Marlboro Trustees**”), at least one of whom shall be an alumnus/a of Marlboro (the “**Alumnus/a Requirement**”). The Eligible Marlboro Trustees to be appointed hereunder shall be appointed, serve, be removed, and be replaced in accordance with Emerson’s By-laws. Without limiting the generality of the foregoing, any vacancy in any of the foregoing described Trustee positions (whether due to death, disability, removal, voluntary termination, or otherwise) shall be filled in accordance with Emerson’s By-laws and without regard to the requirements of the first sentence of this paragraph 1C. Emerson’s obligations pursuant to this Paragraph 1C shall apply only to the extent that there are sufficient Eligible Marlboro Trustees to fill the indicated positions (for example, if there is only one Eligible Marlboro Trustee, Emerson shall be obligated only to appoint that one person to the Emerson Board of Trustees; and if none of the Eligible Marlboro Trustees is an alumnus/a of Marlboro, then the Alumnus/a Requirement shall not apply).

2. **Marlboro Faculty Appointments**

A. *Appointments.* Emerson agrees to appoint and employ those members of the current Marlboro tenured and tenure-track faculty who wish to accept such appointment, under such terms and conditions set out in such faculty member’s appointment letter, provided however that any such offer of appointment (which shall be subject to the successful closing of the transactions contemplated by this Agreement) must be accepted within five (5) Business Days after the Closing Date. The template appointment letters for faculty coming from Marlboro to be Emerson assistant professors and faculty coming from Marlboro to be Emerson associate professors (such persons who become employed by Emerson pursuant to such appointments are collectively referred to herein as the “**Marlboro Faculty**” with each being individually referred to as a “**Marlboro Faculty Member**”) are attached as Attachment 1 to Appendix A. Individual appointment letters may vary depending on the special circumstances of incoming faculty member’s start date, class assignments, locus of appointment, and similar matters. Appendix A also sets out general understandings and agreements of the parties with respect to the appointment of Marlboro faculty to Emerson College. Given the uncertainty surrounding the COVID-19 global pandemic, Emerson may find it necessary to alter its academic calendar, alter the start dates or modality of teaching (on-line versus in person) and take other actions with respect to, or that may affect Emerson faculty generally (including, without limitation lay-offs or furloughs), and such alterations or actions will also apply to Marlboro Faculty, notwithstanding the terms of this Agreement or of the template appointment letters.

B. *Compensation.* Emerson shall pay the salaries and benefits described in the executed offer letter and summarized in Appendix A for the first year for each Marlboro Faculty Member from August 20, 2020, subject to any applicable changes to such salaries and benefits in accordance with Emerson’s policies and procedures. Emerson shall compensate Marlboro Faculty for the 2020-2021 academic year at or above the levels of their salaries and benefits as paid by Marlboro as of the date of this Agreement. Given the uncertainty surrounding the

COVID-19 global pandemic, Emerson may find it necessary to negotiate with the Emerson faculty union changes to salaries and benefits of Emerson faculty generally, and such changes will also apply to Marlboro Faculty, notwithstanding the terms of this Agreement or of the template appointment letters.

C. *Stipend.* Recognizing that Marlboro Faculty may be useful to Emerson during the transition months of July 2020 and August 2020 and acknowledging that Marlboro Faculty will provide extra academic assistance to incoming Marlboro students during the academic year, Marlboro, with Emerson's prior written or oral consent, will provide each Marlboro Faculty Member with a stipend of [REDACTED] for each of July and August, 2020. Marlboro will continue to provide health and dental benefits to Marlboro Faculty (through COBRA coverage or otherwise) through the end of July, in as much as Marlboro Faculty shall not be entitled to health and dental benefits from Emerson until the first of the month following the Closing Date.

3. **Marlboro Student Transfers**

A. *Transfers.* Emerson agrees to accept for the 2020-2021 academic year and enroll those Marlboro undergraduates in good standing who wish to accept such enrollment (those undergraduates who actually become enrolled at Emerson, are collectively referred to as the "**Marlboro Students**"). Emerson reserves the right to decline enrollment to any Marlboro undergraduate, otherwise in good standing, with a documented history of egregious conduct, such as sexual harassment, sexual misconduct, commission of a crime, plagiarism, embezzlement, fraud, breach of fiduciary or other duty owed Marlboro, or other serious misconduct.

B. *Credits.* Emerson shall accept all credits earned by Marlboro Students at Marlboro or Marlboro-approved transfer credits toward equivalent or alternative degree programs at Emerson.

C. *Costs.* For the 2020-2021 academic year, Emerson shall charge each Marlboro Student who pursues their studies in Emerson's Individually Designed Interdisciplinary Program ("**IDIP**") in the Institute the same Net Tuition cost as Marlboro charged such Marlboro Student during the academic year 2019-2020, plus the same percentage increase in 2019-2020 tuition costs as is charged to Emerson undergraduate students for the 2020-2021 academic year. For purposes hereof, "**Net Tuition**" shall mean the amount actually charged by Marlboro to a Marlboro Student net of any institutional financial aid (e.g., awards, credits, discounts, grants, scholarships or other financial support) provided by Marlboro, but without regard to any government or other third party awards, grants, loans, scholarships, work-study or other financial aid received by such Marlboro Student. For each successive year of enrollment, the Marlboro Student tuition for students at the Boston campus will be increased by the same percentage as the percentage increase for tuition charged to other Emerson students. Marlboro Students will pay the same room and board charges and other required fees as charged to other Emerson students. Should Marlboro Students wish to avail themselves of Emerson programs or semesters in Los Angeles, Kasteel Well, or Washington D.C., or to switch to a different Emerson department or major, Emerson will charge those Marlboro Students the same tuition charged to Emerson undergraduates for such semesters, programs and majors. To the extent that Emerson requires

undergraduates in a particular class (first year, second year, etc.) to reside in Emerson residence halls, Emerson will require the same of the Marlboro Students.

D. *Housing.* Emerson will offer all Marlboro Students housing at Emerson for the academic year 2020-2021. Emerson will offer Marlboro Students entering Emerson as sophomores in the fall of 2020 housing for the following academic year, 2021-22. Marlboro Students entering Emerson as sophomores and juniors in the fall of 2020 may participate in the Emerson housing lottery for their senior year. Marlboro represents that it has not admitted any students as freshmen or transfers for the 2020-2021 academic year and has made no commitments to do so. The parties acknowledge and agree that Emerson will charge Marlboro Students Emerson's standard rates for housing and meal plans ("**Room and Board**") that it charges to similarly situated Emerson students. The parties acknowledge that such standard rates for Room and Board typically exceed those currently charged by Marlboro to Marlboro Students for housing and meal plans and that certain Marlboro Students do not pay room and board at Marlboro because it is paid through a Marlboro-granted scholarship (such excess or scholarship amounts being the "**Accommodations Gap**"), and that Marlboro intends to assist the Marlboro Students with funding such Accommodations Gap through housing aid funds from Marlboro (the "**Housing Aid**"). Marlboro covenants and agrees that any such Housing Aid shall be funded by Marlboro solely through the use of the [REDACTED] Bequest (the "**Special Bequest**") and funds raised from donors after January 17, 2020 specifically designated by such donors for such purpose (the "**Special Gifts**" and together with those Special Bequest paid over to Marlboro prior to the Closing, the "**Gifted Housing Aid Funds**"). All Gifted Housing Aid Funds shall be transferred to Emerson at Closing. Emerson shall apply the Gifted Housing Aid Funds transferred to Emerson to pay as much of the Accommodations Gap of Marlboro Students as possible with the amounts so transferred, *provided however*, (i) in the event such Gifted Housing Aid Funds are insufficient to cover the entire Accommodations Gap, such Gifted Housing Aid Funds may be apportioned to reduce the Accommodations Gap in such manner as Emerson may decide in its sole discretion, (ii) Emerson shall not be required to use any Emerson funds, grants, gifts, scholarships, stipends, or other support towards the Accommodations Gap, (iii) Emerson shall not be required to use any Marlboro Funds or any other Marlboro assets, other than the Gifted Housing Aid Funds for the Accommodations Gap. For the sake of clarity, (i) only the funds received by Emerson at the Closing from Special Bequest and Special Gifts shall be deemed Gifted Housing Aid Funds, and funds received by Emerson from Marlboro (or any bequests or donors) after the Closing Date, whether or not deemed to be Special Bequest or Special Gifts are not required to be used by Emerson towards the Accommodations Gap, and (ii) if the Gifted Housing Aid Funds are insufficient to fund the entire Accommodations Gap, any shortfall, at Emerson's discretion, will be borne by the respective affected Marlboro Students.

4. **Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College**

A. *Program.* Emerson shall rename its Institute of Liberal Arts and Interdisciplinary Studies as the “*Marlboro Institute of Liberal Arts and Interdisciplinary Studies at Emerson College*”. Emerson shall collaborate with Marlboro Faculty, in consultation with the Provost of Emerson, the current Dean of the Institute, and Emerson faculty, to develop an academic focus that is based on the elements of the Marlboro Promise and Emerson’s IDIP. The major aspects of the programming are set forth in Appendix B. The Provost of Emerson shall retain final approval over the implementation and activities of the Institute, including its curricular activities and its faculty, as is the norm.

B. *Recruiting and Fundraising.* Upon Emerson’s request, Marlboro shall assist Emerson in the recruitment of Emerson students in connection with launching the Institute until the Closing Date (as defined below). After the Closing Date, Marlboro will encourage alumni and other members of the Marlboro community to continue to generate financial support for the Institute, including gifts for operating income, and to encourage gifts for Institute endowment and other funds. Until the Closing Date, the Parties shall coordinate efforts in fundraising for the Institute in accordance with Emerson policies and procedures, and subject, in cases, to oversight and direction by Emerson.

C. *Identity.* The Institute, throughout its existence, shall be identified by signage, stationery, advertising, logos, public relations and the like that includes “Marlboro.” Diplomas awarded to students who have degrees from the Institute shall include the name “Marlboro Institute.”

5. **Schedule for Certain Actions**

Each Party shall work in good faith to complete the actions identified in Appendix C by the indicated deadline.

6. **Confidential Information**

The Nondisclosure Agreement between Marlboro and Emerson dated September 13, 2019 (the “**Prior NDA**”) is hereby terminated and shall be of no further force or effect. Any prior non-compliance or breach of the Prior NDA is hereby waived or released by the Parties.

7. **Expenses; Spending of Marlboro Endowment Funds and Institute Gifts**

A. *Costs of Transition.* Marlboro and Emerson shall each bear its own costs, expenses and taxes incurred in connection with the performance of this Agreement. Marlboro shall bear the costs of all Excluded Liabilities (as hereafter defined), including without limitation, costs of its institutional transition, including, but not limited to, the fees and expenses of brokers retained by Marlboro in connection with any sale or disposition of its real estate, campus maintenance, teach-out requirements, Marlboro student room and board support, severance obligations, direct and material costs related to the digitization of its records and

transfer of records to Emerson's systems and disposition of all other archives, records, collections, etc. In satisfying any of the foregoing Marlboro costs, Marlboro shall first use and apply as much of its restricted funds as may, in good faith, be used for such purposes under the terms of such restrictions. Inasmuch as Marlboro's payment of the foregoing costs and payment of the Allowance (defined below) in to the Creditor's Trust (defined below) to pay post-closing costs will reduce the amount of Marlboro Funds (as defined below) that will be transferred to Emerson, Marlboro shall consult with and seek the approval of Emerson's Chief Financial Officer, or such Chief Financial Officer's designee, prior to incurring any such cost which, individually, will be in excess of \$5,000.

B. *Marlboro Funds.* Spendable income, defined in accordance with Emerson policy, from the Marlboro Funds that are transferred to Emerson under the terms of this Agreement or otherwise as of the Closing Date, and any gifts to Marlboro or to Emerson for Institute purposes ("**Marlboro Gifts**") shall be expended in the following order of priority and in accordance with the applicable Emerson budgets:

i. First, spendable income from restricted Marlboro Funds and restricted current use Marlboro Gifts, including restricted funds for endowed chairs and any Gifted Housing Aid Funds in excess of the Accommodations Gap, shall be expended in connection with the Institute consistent with the purposes designated by the donors; if it is not possible or feasible to use the funds in connection with the Institute consistent with the purposes designated by the donors, then Emerson may seek donor consent or court authorization to use the funds for other purposes in support of the Institute, and

ii. Second, spendable income from unrestricted Marlboro Funds and unrestricted current use Marlboro Gifts shall be expended solely for (x) satisfaction of the Assumed Liabilities and (y) Institute Purposes. For purposes of this Agreement, the term "**Institute Purposes**" shall mean (a) Marlboro Faculty costs, including Marlboro Faculty holding appointments in departments outside the Institute, provided that they teach courses co-listed in the Institute (b) programmatic costs in connection with the Institute, including but not limited to, courses co-listed with the Institute, (c) financial aid awarded to Marlboro Students, in accordance with Emerson financial aid policies then in effect, (d) financial aid awarded to Institute students, in accordance with Emerson financial aid policies then in effect, (e) increases in wages and benefits for Institute faculty and staff, (f) infrastructure and facilities costs (including, without limitation, operational and repair costs, equipment purchases, and construction, renovation, and other capital costs) relating to the operation, housing, and growth of the Institute, (g) marketing costs associated with the Institute, (h) a good-faith reasonable allocation of (I) Emerson's costs for shared services (such as IT services), and (II) Emerson's direct or indirect institutional support, operations and maintenance or other such administrative costs expended in conjunction with or on behalf of the Institute, (i) solely through use of the Gifted Housing Aid Funds, funding the Accommodations Gap, and (j) costs of defending any claims brought against Emerson in connection with the operations of Marlboro or any Excluded Asset or Excluded Liability.

C. *Fund Restrictions.* Emerson understands that certain amounts of the Marlboro Funds, as set forth in **Section 15xvii of the Disclosure Schedule** are subject to restrictions relating to use of the funds and/or are comprised of investments that have limited liquidity.

8. **Definitions**

In addition to the capitalized terms defined elsewhere in this Agreement (including in the Appendices hereto), the following terms have the meanings specified or referred to in this Section 8:

“Acquisition Proposal” has the meaning set forth in Section 17C.

“Acquisition Schedules” means the Acquisition Schedules delivered by Marlboro and Emerson concurrently with the execution and delivery of this Agreement and attached hereto.

“Action” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the introductory paragraph.

“Allowance” has the meaning set forth in Section 9A(i).

“Ancillary Documents” means the Bill of Sale, the Assignment and Assumption Agreements, Intellectual Property Assignments, the Creditors’ Trust Agreement, and the other agreements, instruments and documents required to be delivered at the Closing.

“Archival Materials” means those documents and other materials to be donated or otherwise transferred by Marlboro to third parties, all as identified in Appendix F.

“Assigned and Assumed Agreements” has the meaning set forth in Appendix D.

“Assigned Contracts” has the meaning set forth in Appendix D.

“Assigned Leases” has the meaning set forth in Appendix D.

“Assignment and Assumption Agreements” has the meaning set forth in Section 13A(viii).

“Assumed Liabilities” has the meaning set forth in Section 10.

“**Audited Financial Statements**” has the meaning set forth in Section 15xix.

“**Balance Sheet**” has the meaning set forth in Section 15xix.

“**Balance Sheet Date**” has the meaning set forth in Section 15xix.

“**Benefit Plan**” means each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, change in control, retention, severance, vacation, paid time off (PTO), medical, vision, dental, disability, welfare, Code Section 125 cafeteria, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each “employee benefit plan” within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by Marlboro for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of Marlboro or any spouse or dependent of such individual, or under which Marlboro has or may have any Liability, or with respect to which Emerson or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise.

“**Bill of Sale**” has the meaning set forth in Section 13A(vii).

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in Massachusetts are authorized or required by Law to be closed.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

“**Closing**” has the meaning set forth in Section 13.

“**Closing Assets**” means all Marlboro Funds actually to be delivered to Emerson at the Closing, but excluding the Gifted Housing Aid Funds. In no event shall the Allowance be treated as part of the Closing Assets.

“**Closing Asset Target Amount**” means \$20,250,000.

“**Closing Date**” has the meaning set forth in Section 13.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Contracts**” means all contracts, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“**Creditors’ Trust**” means a trust governed by the terms of the Creditors’ Trust Agreement and administered by the Creditors’ Trustee for the benefit of the Creditors’ Trust Beneficiaries, which trust shall be formed for the purposes of receiving the Allowance and undertaking the obligation to distribute the Allowance to the Creditors’ Trust Beneficiaries in the amount

designated for each Creditors' Trust Beneficiary set forth in the Creditors' Trust Distribution Schedule within ten (10) Business Days following the later of receipt of the Allowance or the claim of a Creditors' Trust Beneficiary becoming a liquidated and non-contingent liability.

“Creditors' Trust Agreement” means a trust document in the form attached hereto as Appendix E.

“Creditors' Trust Beneficiaries” means those creditors of, and claimants against, Marlboro listed on the Distribution Schedule, each a **“Creditors Trust Beneficiary”**.

“Creditors' Trustee” means Keith Lowey, solely in his capacity as Creditors' Trustee.

“Disclosure Schedules” means the Disclosure Schedules delivered by Marlboro and Emerson concurrently with the execution and delivery of this Agreement and attached hereto.

“Dollars or \$” means the lawful currency of the United States.

“Emerson” has the meaning set forth in the preamble.

“Emerson Closing Certificate” has the meaning set forth in Section 13B(x).

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§

6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“Environmental Notice” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit” means any written Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“ERISA Affiliate” means all employers (whether or not incorporated) that would be treated together with Marlboro as a “single employer” within the meaning of Section 414(b), (c), (m), (n), and (o) of the Code.

“Excluded Assets” has the meaning set forth in Appendix D.

“Excluded Contracts” has the meaning set forth in Appendix D.

“Excluded Intellectual Property Contracts” has the meaning set forth in Appendix D.

“Excluded Leases” has the meaning set forth in Appendix D.

“Excluded Liabilities” has the meaning set forth in Section 11.

“Financial Statements” has the meaning set forth in Section 15xix.

“GAAP” means United States generally accepted accounting principles in effect from time to time.

“Governmental Authority” means (i) any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction, and (ii) the New England Commission of Higher Education.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“Insurance Assignments” has the meaning set forth in Appendix D.

“Insurance Policies” has the meaning set forth in Section 15xi.

“Intellectual Property” means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) (**“Patents”**); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing (**“Trademarks”**); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing (**“Copyrights”**); (d) internet domain names and social media account or user names (including “handles”), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media accounts and pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) mask works, and all registrations, applications for registration, and renewals thereof; (f) industrial designs, and all Patents, registrations, applications for registration, and renewals thereof; (g) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, and technical information, databases, data compilations and collections, tools, methods, processes, techniques, and other confidential and proprietary information and all rights therein (**“Trade Secrets”**); (h) computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof (**“Software”**); and (i) rights of publicity; and (j) all other intellectual or industrial property and proprietary rights.

“Intellectual Property Contracts” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to any Transferred Intellectual Property Assets.

“Intellectual Property Assets” means all Intellectual Property that is owned by Marlboro and used or held for use in the conduct of its business as currently conducted, together with all (i) royalties, fees, income, payments, and other proceeds now or hereafter due or payable to Marlboro with respect to such Intellectual Property; and (ii) claims and causes of action with respect to such Intellectual Property, whether accruing before, on, or after the date hereof/accruing on or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal or equitable relief for past, present, or future infringement, misappropriation, or other

violation thereof. “Intellectual Property Assets” does not include any commercially available software programs used by Marlboro in connection with its activities.

“**Intellectual Property Assignment**” has the meaning set forth in Section 13A(ix).

“**Intellectual Property Registrations**” means all Transferred Intellectual Property Assets that are subject to any issuance, registration, or application by or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued Patents, registered Trademarks, domain names and Copyrights, and pending applications for any of the foregoing.

“**Interim Balance Sheet**” has the meaning set forth in Section 15xix.

“**Interim Balance Sheet Date**” has the meaning set forth in Section 15xix.

“**Interim Financial Statements**” has the meaning set forth in Section 15xix.

“**Knowledge of Marlboro**” or “**Marlboro’s Knowledge**” or any other similar knowledge, belief, or similar qualification, means the actual or constructive knowledge of the President, Chief Financial Officer, Chief Operating Officer, Provost, Director of Plant and Operations, the Chair of the Board of Trustees, and any other Trustee serving on any of the *ad hoc* transition committees formed in connection with the negotiation of the transactions contemplated by this Agreement, *provided however*, such persons shall not be deemed to have Knowledge of any Real Property matters that are of record but as to which such person has no conscious awareness.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Leases**” shall mean any equipment, real or personal property, service and any other leases of any type or nature relating to the Transferred Assets and the Marlboro Campus.

“**Liabilities**” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“**Losses**” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that “Losses” shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

“**Marlboro**” has the meaning set forth in the introductory paragraph.

“**Marlboro Campus**” means the campus located at 2582 South Road, Marlboro, Vermont.

“**Marlboro Closing Certificate**” has the meaning set forth in Section 13A(xi).

“**Marlboro Funds**” means all of Marlboro’s endowment, quasi-endowment and other funds (including without limitation, the Gifted Housing Aid Funds, all cash, cash equivalents, and

accounts receivable), all other current assets (including without limitation, inventory, notes receivable, rebates due, deposits, etc.), and proceeds of the sale of any Excluded Assets, in each case whether held on the Closing Date or thereafter coming into the possession of Marlboro.

“**Marlboro Promise**” means the historic commitment of Marlboro College to teach students (i) to write and communicate with clarity and precision; (ii) to live, work, and collaborate with a wide range of people; and (iii) to lead ambitious projects from idea to execution.

“**Marlboro Student Records**” means the student academic records of Marlboro as described in 16 V.S.A. §175.

“**Music Festival Lease**” means the Amended and Restated Lease Agreement between Marlboro and Marlboro School of Music, Inc., dated January 22, 2019.

“**Net Real Estate Proceeds**” means the gross proceeds of the sale of all or any portion of the Marlboro Campus (including without limitation, any Real Estate Related Tangible Personal Property), less reasonable costs of sale, including the costs of commissions and fees to real estate brokers and consultants, and any taxes payable by Marlboro in connection therewith.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“**Permitted Liens**” has the meaning set forth in Section 15vi.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Post-Closing Tax Period**” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“**PPP Loan**” means the loan in the original principal amount of \$1,000,000 obtained by Marlboro from Peoples United Bank (the “**Bank**”) on or about April 9, 2020 pursuant to the Paycheck Protection Program of the U.S. Coronavirus Aid, Relief, and Economic Security (CARES) Act (the “**CARES Act**”).

“**Pre-Closing Tax Period**” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“**Qualified Benefit Plan**” has the meaning set forth in Section 15xv(c).

“**Real Estate Related Tangible Personal Property**” means all furniture, fixtures, and equipment of Marlboro, except the Tangible Personal Property described in Appendix D, it being understood that Marlboro intends to transfer such furniture, fixtures, and equipment to the purchaser of the Property, *provided however*, any furniture, fixtures, and equipment that is subject

to a lease or other obligation or liability shall only be included as Real Estate Related Tangible Personal Property if the purchaser of the Real Property assumes (and assures release of Marlboro from) any such lease, other obligation or liability.

“Real Property” means the Marlboro Campus and all other real property owned by Marlboro.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Standard Termination” means a “standard termination” under Section 4041(b) of ERISA.

“Tangible Personal Property” has the meaning set forth in Appendix D.

“Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“Tax Return” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transferred Assets” has the meaning set forth in Section 9.

“WARN Act” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses, as applicable.

9. Transfer of Assets

A. *Transferred Assets.* On the terms and subject to the conditions of this Agreement, in consideration of Emerson's agreement to integrate certain elements of the Marlboro educational programming into the Emerson Institute (the "**Integration**"), rename the Emerson Institute as the Marlboro Institute for Liberal Arts and Interdisciplinary Studies at Emerson College (the "**Renaming**"), employ the Marlboro Faculty and accept the transfer of the Marlboro Students, and on the basis of the representations and warranties herein contained, Marlboro shall transfer, convey, assign and deliver to Emerson on the Closing Date, all of its right, title and interest in the assets described in this Section 9 (collectively, the "**Transferred Assets**"), free and clear of all Encumbrances (other than Permitted Liens). The Transferred Assets shall include the following assets (Marlboro agrees to cover reasonable costs, if any, of moving the Tangible Personal Property to Emerson's Boston campus, subject nonetheless, to approval by Emerson of any such costs exceeding \$5,000):

- i. The Marlboro Funds, less the amount set forth in the Distribution Schedule to the Creditors' Trust to fund the Marlboro Liabilities described therein, as agreed upon by Marlboro and Emerson, relating to, among other things, payoff of Marlboro's long term indebtedness, obligations concerning the Marlboro Campus and other real estate, employees, tax, final audits, reporting and other compliance matters and any other Excluded Liabilities (the "**Allowance**"). The Parties acknowledge and agree that, in accordance with the Creditors' Trust Agreement, any amounts of the Allowance remaining after satisfaction of the obligations set forth in the Creditors' Trust Agreement, shall be transferred to Emerson and shall be deemed to be part of the Marlboro Funds.
- ii. The Marlboro Student Records.
- iii. The other tangible and intangible assets described in Appendix D.

B. *Excluded Assets.* Notwithstanding the foregoing, the Transferred Assets shall not include the Marlboro Campus or the other Excluded Assets described in Appendix D.

10. Assumed Liabilities

Subject to the terms and conditions set forth herein, Emerson shall assume and agree to pay, perform and discharge all of the following, but only the following, Liabilities of Marlboro (collectively, the "**Assumed Liabilities**") and no other liabilities:

All liabilities, commitments and other obligations occurring after the Closing Date in connection with the Assigned and Assumed Agreements.

The Parties expressly agree that, except with respect to the Assumed Liabilities, Emerson is not assuming and will not become liable for any other liabilities, amounts, commitments, or other obligations of Marlboro (including, without limitation, the Excluded Liabilities).

11. Excluded Liabilities

Emerson shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Marlboro or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the “**Excluded Liabilities**”). Without limiting the generality of the foregoing, the Excluded Liabilities shall include but not be limited to, the following:

(a) any Liabilities of Marlboro arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the Ancillary Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others;

(b) any Liability for (i) Taxes of Marlboro (or any Affiliate of Marlboro) or relating to the Transferred Assets or the Assumed Liabilities for any Pre-Closing Tax Period; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of Marlboro pursuant to this Agreement, or (iii) other Taxes of Marlboro (or any Affiliate of Marlboro) of any kind or description (including any Liability for Taxes of Marlboro (or any Affiliate of Marlboro) that becomes a Liability of Emerson under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law;

(c) any Liabilities relating to or arising out of the Excluded Assets;

(d) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation or wind-down of Marlboro, the Transferred Assets, the Assigned and Assumed Agreements, the Transferred Intellectual Property Assets, the Marlboro Campus or in any other matter involving Marlboro on or prior to the Closing Date.

(e) any Liabilities of Marlboro arising under or in connection with any Benefit Plan providing benefits to any present or former employee of Marlboro;

(f) any Liabilities of Marlboro for any present or former employees, officers, tenured staff, adjunct staff, staff, professors, teachers, directors, officers, administrators, retirees, independent contractors or consultants or agents of Marlboro, including, without limitation, any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers’ compensation, severance, retention, termination or any other claims of any kind or nature;

(g) any Environmental Claims, or Liabilities under Environmental Laws;

(h) any Liabilities to indemnify, reimburse or advance amounts to any present or former employees, officers, tenured staff, adjunct staff, staff, professors, teachers, directors, officers, administrators, retirees, independent contractors or consultants or agents of Marlboro (including with respect to any breach of fiduciary obligations by same);

(i) any Liabilities under the Excluded Contracts or any other Contracts, including Intellectual Property Contracts, (i) which are not validly and effectively assigned to Emerson pursuant to this Agreement; and (ii) which do not conform to the representations and warranties with respect thereto contained in this Agreement; or (iii) to the extent such Liabilities arise out of or relate to a breach by Marlboro of such Contracts prior to Closing;

(j) any Liabilities associated with debt, loans or credit facilities of Marlboro owing to financial institutions, entities or individuals;

(k) any Liabilities arising out of, in respect of or in connection with the failure by Marlboro or any of its Affiliates to comply with any Law or Governmental Order;

(l) any Liability, as successor or otherwise, for any arrears by Marlboro in payments to employees for wages or otherwise, nor for contributions to any Employee Benefit Plan or any trust agreement. Marlboro shall remain liable for all of its pre Closing arrears to any such Employee Benefit Plans;

(m) any liability associated with the removal or disposal of any of the equipment, inventory or assets of Marlboro that are not Transferred Assets and

(n) Any liabilities arising out of, relating to or otherwise in respect to the operation of Marlboro, the Transferred Assets, the Assigned and Assumed Agreements, the Transferred Intellectual Property Assets, the Marlboro Campus or any other matter involving Marlboro on or prior to the Closing.

12. **Additional Transfer to Emerson**

In addition to the Transferred Assets to be transferred on the Closing Date to Emerson, Marlboro shall transfer to Emerson all Net Real Estate Proceeds on the latter of the Closing Date or promptly after the Campus is sold. Marlboro covenants and agrees to use its reasonable best efforts to market and to sell the Marlboro Campus as soon as reasonably practicable taking into consideration all of the following factors: (i) on an “as is – where is” basis, (ii) the extent to which the prospective buyer’s planned uses of the Marlboro Campus are consistent with historical uses and benefits to the surrounding community, and (iii) the extent, if any that the amount paid by the buyer is affected by the terms of the Music Festival Lease. If the transfer of ownership of the Campus before the Closing Date is to an unrelated third party in its entirety with no obligations and encumbrances remaining with Marlboro (including but not limited to the January 19, 2019 Marlboro Music Festival lease) and for a net positive amount greater than One Dollar (\$1.00), then Marlboro may conclude the transaction as it sees fit without Emerson approval or further requirements. If the Campus is not sold by the Closing Date or is proposed to be sold for a negative price, then Marlboro must obtain a release and/or indemnity from the Marlboro Music Festival, naming Emerson, Marlboro and all related entities, funds, endowments or promises of funds or endowment, in form and substance, satisfactory to Marlboro and Emerson. For the sake of clarity, the parties acknowledge and agree that pursuant to Section 18B(iv) below, the sale of the Campus is a precondition to the obligations of Emerson to consummate the transactions contemplated by this Agreement, and that the provisions of this Section 12 that refer to obligations that apply in the event that the Campus is not sold prior to the Closing, are included so as to apply in the event that Emerson waives satisfaction of such condition to Closing (it being expressly acknowledged and understood that Emerson has no obligation to provide such waiver and currently does not intend to provide any such waiver).

Marlboro covenants and agrees to consult with and keep Emerson informed, on a regular basis, with respect to plans and developments with respect to the marketing and sale of the Marlboro Campus.

13. **Closing**

Subject to the terms and conditions of this Agreement, and the satisfaction or waiver of all closing conditions set forth herein, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of Holland and Knight, LLP, 10 St. James Avenue, Boston, Massachusetts, 02116, at 12:00 P.M. EDT, on July 21, 2020 or at such other time, date or place as Emerson and Marlboro may mutually agree upon in writing (the “**Closing Date**”). On the Closing Date, in consideration of the Integration, the Renaming, and Emerson’s agreement to employ the Marlboro Faculty, accept the transfer of the Marlboro Students, and assume the Assumed Liabilities, Marlboro shall transfer to the Creditors’ Trust the amount of the Allowance and Marlboro shall deliver the Transferred Assets to Emerson in accordance with the terms of this Agreement.

A. *Marlboro Closing Deliverables.* At the Closing, Marlboro shall deliver to Emerson the following (the “**Marlboro’s Closing Deliverables**”):

(i) The Marlboro Funds (less the Allowance) by wire transfer to such accounts as may be designated in writing by Emerson prior to the Closing (or, to the extent such Marlboro Funds are not cash or cash equivalents, by such other instruments of conveyance as are appropriate to vest ownership and possession in Emerson)

(ii) a Creditors’ Trust Agreement duly executed by Marlboro and the Creditors’ Trust Trustee;

(iii) the Allowance, by wire transfer to the Creditors’ Trustee, to be held and disbursed in accordance with the Creditors’ Trust Agreement;

(iv) all gift documentation associated with the funds that comprise the endowment;

(v) authorizations related to actions taken with respect to each of the endowment fund managers;

(vi) the most recent valuations of each fund transferred to Emerson as part of the Marlboro Funds;

(vii) a bill of sale in form and substance satisfactory to Emerson (the “**Bill of Sale**”) and duly executed by Marlboro, transferring the Tangible Personal Property included in the Transferred Assets to Emerson;

(viii) assignment and assumption agreements in form and substance satisfactory to Emerson and Marlboro (the “**Assignment and Assumption Agreements**”), duly executed by Marlboro, effectuating the assignment to and assumption by Emerson of the Assigned and Assumed Agreements;

(ix) assignments in form and substance satisfactory to Emerson and Marlboro (the “**Intellectual Property Assignments**”) and duly executed by Marlboro, transferring all of Marlboro’s right, title and interest in and to the Intellectual Property Assets to Emerson;

(x) an assignment and assumption agreement in form satisfactory to Emerson and Marlboro (the “**Assignment and Assumption of Assumed Liabilities Agreement**”), duly executed by Marlboro, effectuating the assignment and assumption by Emerson of all other Assumed Liabilities;

(xi) a certificate, dated the Closing Date and signed by a duly authorized officer of Marlboro, that each of the conditions set forth in Section 18B(i), Section 18B(ii), and Section 18B(iii) have been satisfied (the “**Marlboro Closing Certificate**”);

(xii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Marlboro (A) certifying that attached thereto (i) are true and complete copies of all resolutions adopted by the Board of Trustees of Marlboro authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby; (ii) a true and complete copy of the by-laws of Marlboro and that the by-laws are in full force and effect and are the by-laws in affect at the time of the adoption of the resolutions; and (iii) a certificate from the Secretary of State of the State of Vermont certifying to the legal existence of Marlboro and (B) certifying as to incumbency of each person executing any agreements, certificates, reports or other papers, including but not limited to the Ancillary Documents;

(xiii) evidence (A) of the timely giving of all required notices and receipt of all required governmental approvals applicable to Marlboro, and (B) that any applicable waiting period shall have expired or terminated;

(xiv) any other approvals, consents, waivers or other documentation necessary for Marlboro (including, without limitation, any UCC-3 filings requested by Emerson) to assign each of the Assigned Contracts, the Assigned Leases, the Intellectual Property Contracts and Leases, the Intellectual Property Assets, the Transferred Assets to Emerson, as further provided in Section 17G;

(xv) any required consents or assignments (including UCC-3 filings) required for Emerson’s acquisition of the Tangible Personal Property; and

(xvi) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Emerson, as may be requested by Emerson and that are required to consummate the transactions contemplated by this Agreement.

B. *Emerson Closing Deliverables.* At the Closing, Emerson shall deliver to Marlboro the following (collectively, the “**Emerson Closing Deliverables**”):

(i) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Emerson certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Emerson authorizing the execution, delivery and performance of this

Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby; (ii) a true and complete copy of the by-laws of Emerson and that the by-laws are in full force and effect and are the by-laws in affect at the time of the adoption of the resolutions; and (iii) a certificate from the Secretary of Commonwealth of the Commonwealth of Massachusetts certifying to the legal existence of Emerson and (B) certifying as to incumbency of each person executing any agreements, certificates, reports or other papers, including but not limited to the Ancillary Documents;

(ii) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Emerson certifying the names and signatures of the officers of Emerson authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder;

(iii) evidence of the delivery to the Marlboro Faculty of the respective appointment letters;

(iv) documentation regarding the provisional acceptance of students, transfer of credits, and provision of tuition discount as applicable;

(v) documentation regarding approval by Emerson of the change of name of the Institute;

(vi) the Assignment and Assumption of Assumed Liabilities Agreement duly executed by Emerson;

(vii) the Intellectual Property Assignments duly executed by Emerson;

(viii) the Assignment and Assumption Agreements duly executed by Emerson;

(ix) a license agreement pursuant to which Emerson grants to Marlboro a worldwide, royalty free, nonexclusive license to use the name "Marlboro College" in connection solely with Marlboro's winding down of its operations and corporate existence;

(x) a certificate, dated the Closing Date and signed by a duly authorized officer of Emerson, that each of the conditions set forth in Section 18C(i) and Section 18C(ii) have been satisfied (the "**Emerson Closing Certificate**");

(xi) evidence of all required governmental approvals applicable to Emerson's consummation of the transactions contemplated by this Agreement;

(xii) evidence of any other approvals, consents, waivers or other documentation necessary for Emerson to consummate the transactions contemplated by this Agreement; and

(xiii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Marlboro, as may be requested by Marlboro required to consummate the transactions contemplated by this Agreement.

14. **Marlboro Campus**

The Parties acknowledge and agree that Marlboro shall pay off the existing mortgage lien on the Marlboro Campus from Marlboro Funds on or before the Closing Date. The amount paid to satisfy the lien shall not affect the amount of the Allowance.

15. **Representations and Warranties Of Marlboro**

As an inducement to Emerson to execute and deliver this Agreement, except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Marlboro represents and warrants to Emerson that as of the date of the execution and delivery of this Agreement and as of the Closing Date that the statements contained in this Section 15 (“Marlboro’s Representations and Warranties”) are true and correct.

i. **Organization and Qualification.** Marlboro is a nonprofit public benefit corporation duly organized, validly existing, and in good standing under the laws of Vermont, with all requisite power and authority, and all necessary consents, authorizations, approvals, orders, licenses, certificates, and permits of and from, and declarations and filings with, all federal, state, local, and other governmental authorities and all courts and other tribunals, to own, lease, license, and use its properties and assets and to carry on the businesses in which it is now engaged and the businesses in which it contemplates engaging except where any failure to hold any consent, authorization, approval, order, license, certificate, permit, declaration or filing would not materially limit (A) the ability of Marlboro to perform its obligations pursuant to this Agreement, (B) Emerson’s ability to receive and use the Transferred Assets, the Gifted Housing Aid Funds, or proceeds from the sale of the Real Property, free and clear of all Encumbrances (except for Permitted Liens) and as otherwise contemplated by this Agreement, (C) or Emerson’s right or ability to enroll the Marlboro Students or hire the Marlboro Faculty. Marlboro is duly qualified to transact the businesses in which it is engaged and is in good standing as a foreign corporation in every jurisdiction in which its ownership, leasing, licensing, or use of property or assets or the conduct of its businesses makes such qualification necessary.

ii. **Tax Exempt Status.** Marlboro is exempt from federal income taxes under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, and has received a determination letter from the Internal Revenue Service to that effect. Such determination letter is currently in full force and effect and has not been terminated, revoked or modified, and Marlboro is in compliance with all of the terms and conditions contained in such determination letter. Marlboro is not a “private foundation” within the meaning of § 509(a) of the Code. All filings necessary to maintain Marlboro’s tax-exempt status under Section 501(c)(3) of the Code have been made by or on behalf of Marlboro. Marlboro has not done anything to impair its status as an organization qualifying for tax-exempt status under Section 501(c)(3) of the Code, and no circumstances have occurred that would disqualify Marlboro as a tax-exempt organization under Section 501(c)(3) of the Code. There are no suits, actions or proceedings challenging or contesting Marlboro’s tax-exempt status under Section 501(c)(3) of the Code, and Marlboro has not received any letter or other communication from the IRS or any other person or

entity regarding any possible action, formal or informal, that could result in the suspension or revocation of Marlboro's tax-exempt status under Section 501(c)(3) of the Code.

iii. Authority; No Conflicts; Consents. (1) Marlboro has all requisite power and authority to execute, deliver, and perform this Agreement and each of the Ancillary Documents; (2) all necessary corporate proceedings of Marlboro have been duly taken to authorize the execution, delivery, and performance of this Agreement and each of the Ancillary Documents by Marlboro; and (3) this Agreement has been, and each of the Ancillary Documents when executed and delivered by Marlboro will be, duly authorized, executed, and delivered by Marlboro, constitutes the legal, valid, and binding obligation of Marlboro, and is enforceable as to it in accordance with its terms. Except as set forth in ***Section 15iii of Marlboro's Disclosure Schedules***, no consent, authorization, approval, order, license, certificate, or permit of or from, or declaration or filing with, any federal, state, local, or other Governmental Authority or any court or other tribunal is required by Marlboro for the execution, delivery, or performance of this Agreement or any Ancillary Document by Marlboro. Except as set forth in ***Section 15iii of Marlboro's Disclosure Schedules***, no consent of any party to any contract, agreement, instrument, lease, license, arrangement, understanding, or other Contract to which Marlboro is a party, or to which it or its properties or assets (including without limitation, the Transferred Assets) are subject, is required for the execution, delivery, or performance of this Agreement or any Ancillary Document by Marlboro; and the execution, delivery, and performance of this Agreement and the Ancillary Documents will not (x) violate, result in a breach of, conflict with, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or call a default under any term of any such contract, agreement, instrument, lease, license, arrangement, understanding, or other Contract, or violate or result in a breach of any term of the certificate of incorporation (or other charter document) or by-laws of Marlboro, or violate, result in a breach of, or conflict with any law, rule, regulation, Governmental Order, judgment, or decree binding on Marlboro or to which any of its properties or assets (including without limitation, the Transferred Assets) are subject, or (y) result in the creation or imposition of any Encumbrance other than Permitted Liens on the Transferred Assets.

iv. Indebtedness. All of Marlboro's outstanding long-term and short-term debt obligations, including the principal amount due thereunder and the amount of accrued but unpaid interest are set forth on ***Section 15iv of Marlboro's Disclosure Schedule*** (the "**Schedule of Indebtedness**").

v. Contracts.

(a) ***Section 15v(a) of Marlboro's Disclosure Schedule*** lists each and every Contract (whether oral or written), agreement, license, and any other agreement for which Marlboro has any direct, indirect or contingent obligations or liabilities of any nature.

(b) Each Assigned and Assumed Agreement is valid and binding on Marlboro (and to Marlboro's Knowledge each other party) in accordance with its terms and is in full force and effect. Marlboro is not (and to Marlboro's Knowledge no other party is) in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Assigned and Assumed Agreement. Marlboro has not caused any event or circumstance to occurred that, with notice or lapse of time or both, would constitute an

event of default by Marlboro under any Assigned and Assumed Agreement or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Assigned and Assumed Agreement (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Emerson. There are no material disputes made by or against Marlboro pending or threatened under any Assigned and Assumed Agreement.

(c) To the Knowledge of Marlboro, each Assigned and Assumed Agreement is enforceable against the applicable counterparty and subject to obtaining any necessary consents or delivering any necessary notices as set forth in *Section 15iii of Marlboro's Disclosure Schedule* will continue to be enforceable and in full force and effect following the consummation of this transaction.

vi. Title to Transferred Assets. Except for those Encumbrances set forth in *Section 15vi of Marlboro's Disclosure Schedule* (the "**Permitted Liens**"), Marlboro has good, clear and valid title to all of the Transferred Assets.

vii. Condition and Sufficiency of Assets. Except as set forth in *Section 15vii of Marlboro's Disclosure Schedule*, there has been no material damage or other casualty other than normal wear and tear to items of tangible personal property included in the Transferred Assets since the Balance Sheet Date.

viii. Real Property.

(a) *Section 15viii of Marlboro's Disclosure Schedule* sets forth all of the Real Property. The Real Property constitutes all of the real property owned by Marlboro.

(b) Except as set forth on *Section 15viii of Marlboro's Disclosure Schedule*, to Marlboro's Knowledge, there are no unrecorded outstanding options, rights of first offer or rights of first refusal to purchase any of the Real Property or any portion thereof or interest therein except as set forth in the Music Festival Lease.

(c) To Marlboro's Knowledge, except as set forth in the Music Festival Lease, (i) there are no purchase and sale agreements or development agreements that affect any of the Real Property with any third party, and (ii) Marlboro has not entered into any agreement restricting any future development of the Real Property.

(d) Marlboro has not received any written notice of any violations of building, fire, health, sanitation, handicapped persons, uses and occupancy, zoning laws, ADA matters, other governmental or regulatory laws affecting any of the Real Property, or that any work is required to be done upon or in connection with the Real Property.

(e) To Marlboro's Knowledge, there are no leases, licenses or other agreements for the use or operation of the Real Property other than the Music Festival Lease.

ix. Intellectual Property.

(a) **Section 15ix of Marlboro's Disclosure Schedule** contains a correct, current and complete list of: (i) all Intellectual Property Registrations, specifying as to each, as applicable: the title, mark, or design; the jurisdiction by or in which it has been issued, registered or filed; the patent, registration or application serial number; the issue, registration or filing date; and the current status; (ii) all unregistered Trademarks included in the Transferred Intellectual Property Assets; (iii) all proprietary Software included in the Transferred Intellectual Property Assets; and (iv) all other Transferred Intellectual Property Assets that are used by Marlboro. All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing. Marlboro has provided Emerson with true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Intellectual Property Registrations.

(b) There are no material Intellectual Property Contracts.

(c) Except as set forth in **Section 15ix(c) of Marlboro's Disclosure Schedule**, Marlboro is the sole and exclusive legal and beneficial, and with respect to the Intellectual Property Registrations, record owner of all right, title and interest in and to the Transferred Intellectual Property Assets, free and clear of Encumbrances other than Permitted Liens.

(d) Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of or payment of any additional amounts, other than filing fees payable in connection with the filing of assignments with the United States Patent and Trademark Office, with respect to, nor require the consent of any other Person in respect of, Emerson's right to own or use any Transferred Intellectual Property Assets.

(e) All of the Transferred Intellectual Property Assets are valid and enforceable, and all Intellectual Property Registrations relating to the Transferred Intellectual Property Assets are subsisting and in full force and effect. Marlboro has taken all reasonable and necessary steps to maintain and enforce the Transferred Intellectual Property Assets.

(f) To the Knowledge of Marlboro, the use of the Transferred Intellectual Property Assets have not infringed, misappropriated, or otherwise violated the Intellectual Property or other rights of any Person. To the Knowledge of Marlboro, no Person has infringed, misappropriated, or otherwise violated any Transferred Intellectual Property Assets or the Intellectual Property licensed under the Intellectual Property Contracts in connection therewith.

(g) There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding) settled, pending or, to the Knowledge of Marlboro, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation of the Intellectual Property of any Person by Marlboro (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Transferred Intellectual Property Assets; or (ii) by Marlboro or any other Person alleging any infringement, misappropriation, or violation by any Person of any Transferred Intellectual Property Assets. Marlboro is not aware of any facts or circumstances that could reasonably be expected to give rise to any such Action. Marlboro is not subject to any outstanding or prospective

Governmental Order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the use of any Transferred Intellectual Property Assets.

x. Tangible Personal Property. All of Marlboro's owned Tangible Personal Property is set forth and/or generally described in *Section 15x(a) of Marlboro's Disclosure Schedule*. Other than as set forth in *Section 15x(b) of Marlboro's Disclosure Schedule*, there are no Encumbrances on any of the Tangible Personal Property.

xi. Insurance. The fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, employment, vehicular, fiduciary liability and other casualty and property insurance maintained by Marlboro or its Affiliates and relating to Marlboro, the Transferred Assets or the Real Property (collectively, the "**Insurance Policies**") is maintained in reasonable coverage amounts and types for an institution of higher education. Except as set forth on *Section 15xi of Marlboro's Disclosure Schedule*, with respect to Marlboro, the Transferred Assets or the Real Property, there are no pending claims pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. Marlboro has not received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All Insurance Policies (a) are in full force and effect and enforceable in accordance with their terms; and (b) have not been subject to any lapse in coverage. Marlboro is not in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. Marlboro has and will continue to provide prompt notice to its insurers of any future claims (both pre and post the Closing Date) and shall provide notice of any pending potential claims under any of the policies. True and complete copies of the Insurance Policies have been made available to Emerson.

xii. Legal Proceedings; Governmental Orders.

(a) Except as set forth in *Section 15xii(a) of Marlboro's Disclosure Schedule*, Marlboro has not received written notice of any pending or filed claims, actions, causes of action, demands, or inquiries, audits, notices of violation, proceedings, litigation, subpoenas or investigation (collectively the ("**Claims**") of any nature, civil, criminal administrative, regulatory, or otherwise, whether at law or in equity in any way related to Marlboro, the Transferred Assets, the Real Property, any director, trustee, officer, administrator, student, employee, retiree, consultant or agent of Marlboro, the Tangible Personal Property, any of the Assigned and Assumed Agreements, Transferred Intellectual Property Assets, or any Benefit Plan.

(b) Except as set forth in *Section 15xii(b) of Marlboro's Disclosure Schedule* Marlboro has no Knowledge of any action seeking to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement and that no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(c) Except as set forth in *Section 15xii(c) of Marlboro's Disclosure Schedule*, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting Marlboro, the Transferred Assets, the Real Property, any director, trustee, officer, administrator, student, employee, retiree, consultant or agent of Marlboro, the

Tangible Personal Property, any of the Assigned and Assumed Agreements, Transferred Intellectual Property Assets, or any Benefit Plans. Marlboro is in compliance with the terms of each Governmental Order set forth in **Section 15xii(c) of the Disclosure Schedules**. To the Knowledge of Marlboro, no event has occurred or circumstances exist that may constitute or result in a material violation of any such Governmental Order.

xiii. Compliance With Laws; Permits.

(a) Except as set forth in **Section 15xiii(a) of Marlboro's Disclosure Schedule**, to the Knowledge of Marlboro, Marlboro has complied, and is now complying, with all material Laws, including but not limited to any educational laws, applicable to the ownership and use of the Transferred Assets and the Real Property.

(b) All material Permits required for the ownership of the Transferred Assets and the Real Property have been obtained by Marlboro and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. **Section 15xiii(b) of Marlboro's Disclosure Schedule** lists all current material Permits issued to Marlboro which are related to the conduct of Marlboro as currently conducted or the ownership of the Transferred Assets and the Real Property, including the names of the Permits and their respective dates of issuance and expiration. To the Knowledge of Marlboro, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in **Section 15xiii(b) of Marlboro's Disclosure Schedule**.

xiv. Environmental Matters. Except as set forth in publicly available information and Marlboro's **Disclosure Schedules**:

(a) The operations of Marlboro with respect to the Real Property and the Transferred Assets are currently and have been in material compliance with all Environmental Laws. Marlboro has not received from any Person, with respect to any of the Real Property or the Transferred Assets, any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) There has been no Release of Hazardous Materials in contravention of Environmental Law with respect to any of the Real Property or the Transferred Assets or any real property currently or formerly owned, leased or operated by Marlboro, and Marlboro has not received an Environmental Notice that any of the Real Property or the Transferred Assets, or real property currently or formerly owned, leased or operated by Marlboro (including soils, groundwater, surface water, buildings and other structure located thereon) has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a material violation of Environmental Law or term of any Environmental Permit by, Marlboro.

(c) **Section 15xiv(c) of Marlboro's Disclosure Schedule** contains a complete and accurate list of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations to Marlboro's Knowledge used by Marlboro since January 1, 2015 in connection with

any of the Real Property and the Transferred Assets as to which Marlboro may retain liability, and to the Knowledge of Marlboro, none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any similar state list, and Marlboro has not received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by Marlboro.

(d) Marlboro has not retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(e) Marlboro is not aware of nor does Marlboro reasonably anticipate, as of the Closing Date, any condition, event or circumstance concerning the Release or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede or materially increase the costs associated with the ownership, lease, operation, performance or use of any of the Real Property or the Transferred Assets as currently carried out.

xv. Employee Benefit Matters.

(a) ***Section 15xv(a) of Marlboro's Disclosure Schedule*** contains a true and complete list of each Benefit Plan. Marlboro has no ERISA Affiliates and no Benefit Plan that is maintained, sponsored, contributed to, or required to be contributed to by Marlboro primarily for the benefit of employees of Marlboro outside of the United States.

(b) With respect to each Benefit Plan, Marlboro has made available to Emerson accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (iv) copies of any summary plan descriptions, summaries of material modifications, summaries of benefits and coverage, COBRA communications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service and any legal opinions issued thereafter with respect to such Benefit Plan's continued qualification; (vi) in the case of any Benefit Plan for which a Form 5500 must be filed, a copy of the two most recently filed Forms 5500, with all corresponding schedules and financial statements attached; (vii) actuarial valuations and reports related to any Benefit Plans with respect to the most recently completed plan years; (viii) the most recent nondiscrimination tests performed under the Code; and (ix) copies of material notices, letters or other correspondence from the Internal Revenue Service, Department of Labor, Department of Health and Human Services, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan.

(c) Except as set forth in ***Section 15xv(c) of Marlboro's Disclosure Schedule***, each Benefit Plan and any related trust in all material respects has been established, administered

and maintained in accordance with its terms and materially in compliance with all applicable Laws (including ERISA, the Code and any applicable local Laws). Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a “**Qualified Benefit Plan**”) is so qualified and received a favorable and current determination letter from the Internal Revenue Service, or with respect to a prototype or volume submitter plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan or volume submitter plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. To the Knowledge of Marlboro, nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject Marlboro or, with respect to any period on or after the Closing Date, Emerson or any of its Affiliates, to a penalty under Section 502 of ERISA or to tax or penalty under Sections 4975 or 4980H of the Code.

(d) No pension plan which is subject to minimum funding requirements, in which employees of Marlboro participate or have participated has failed to meet the minimum funding standards under Section 412 of the Code, whether or not waived, or is subject to a lien for unpaid contributions under Section 303(k) of ERISA or Section 430(k) of the Code. No pension plan covering employees of Marlboro which is a defined benefit plan has an “adjusted funding target attainment percentage,” as defined in Section 436 of the Code, less than 80%. Except as set forth in *Section 15xv(d) of Marlboro’s Disclosure Schedule*, all benefits, contributions and premiums relating to each Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all applicable Laws and accounting principles, and all benefits accrued under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with GAAP.

(e) Marlboro has not (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) ever participated in any Multiemployer Plan; (iv) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA; (v) incurred taxes under Section 4971 of the Code with respect to any pension plan; or (vi) participated in a multiple employer welfare arrangements (MEWA).

(f) With respect to each Benefit Plan, (i) no such plan is a Multiemployer Plan and Marlboro does not have nor is it reasonably expected to have any Liability with respect to a Multiemployer Plan; (ii) no such plan is a “multiple employer plan” within the meaning of Section 413(c) of the Code or a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA); (iii) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any Benefit Plan or to appoint a trustee for any Benefit; (iv) except as set forth in *Section 15xv(f) of Marlboro’s Disclosure Schedules*, no such plan maintained or contributed to within the last six (6) years is a Single Employer Plan subject to Title IV of ERISA; and (v) except as set forth in *Section 15xv(f) of Marlboro’s Disclosure Schedules*, no “reportable event,” as defined in Section 4043 of ERISA, with respect to which the reporting requirement has not been waived, has occurred with respect to any such plan.

(g) Except as set forth in *Section 15xv(g) of Marlboro's Disclosure Schedule* and other than as required under Sections 601 to 608 of ERISA or other applicable Law, no Benefit Plan or other arrangement provides post-termination or retiree health benefits to any individual for any reason.

(h) Except as set forth in *Section 15xv(h) of Marlboro's Disclosure Schedule*, there is no pending or, to Marlboro's Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the three years prior to the date hereof been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under, or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

xvi. Employment Matters.

(a) Except as set forth in *Section 15xvi(a) of Marlboro's Disclosure Schedule*, as of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all executive officers, employees, tenured and adjunct faculty members, staff, independent contractors or consultants of Marlboro for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of Marlboro with respect to any compensation, commissions, bonuses or fees.

(b) The Creditors' Trust includes a true and accurate description of the total payout to be paid to all of its employees including faculty, tenured faculty, executive management and staff upon the Closing Date. Marlboro has offered individual employees severance as part of the total payoff, in return for a valid release of claims in a form satisfactory to Emerson. Except as set forth in Section 15xvi(b) of Marlboro's Disclosure Schedule, as of the Interim Balance Sheet Date through the time of the Closing Marlboro has not entered into, renewed, continued or amended any employment contracts.

(c) As of the Closing Date, except as set forth in *Section 15xvi(c) of Marlboro's Disclosure Schedule*, all employees of Marlboro will have been terminated in accordance with all applicable laws.

(d) Marlboro is not, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "**Union**"), and there is not, and has not been for the past five years, any Union representing or purporting to represent any employee of Marlboro, and, to Marlboro's Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. Since January 1, 2015, there has not been an unfair labor practice charge against Marlboro.

(e) Marlboro is and has been in compliance, in all material respects, with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees, volunteers, interns, consultants, tenured and adjunct faculty, staff and independent contractors of Marlboro, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime

compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave and unemployment insurance. All individuals characterized and treated by Marlboro as consultants or independent contractors of Marlboro are properly treated as independent contractors under all applicable Laws. All employees of Marlboro classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified in all material respects. To the Knowledge of Marlboro, Marlboro is in compliance with and has complied with all immigration laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations. Except as set forth in ***Section 15xvi(e) of Marlboro's Disclosure Schedule***, Marlboro has received no notice of any Actions against Marlboro pending, or to Marlboro's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of Marlboro, including, without limitation, any charge, investigation or claim relating to unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, employee classification, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave, unemployment insurance or any other employment related matter arising under applicable Laws.

(f) Marlboro has complied (or prior to the Closing will comply) in all material respects with the WARN Act, and has satisfied (or prior to the Closing will satisfy) in all material respects any obligations under the WARN Act, including without limitation notice sufficient to avoid penalties, and compensation and benefits paid to all affected employees of Marlboro.

(g) Marlboro is not a party to any Contracts with any Governmental Authority.

xvii. **Endowment and Investments.** ***Section 15xvii of Marlboro's Disclosure Schedule*** sets forth Marlboro's endowment and identifies (a) all of its investments and account information, including but not limited to account name and number, and (b) the terms of all restrictions on individual funds. Except for donor restrictions set forth in ***Section 15xvii of Marlboro's Disclosure Schedule***, there are no Encumbrances against or which materially affect the value of the endowment and investments.

xviii. **Taxes.** Except as set forth in ***Section 15xviii of Marlboro's Disclosure Schedule:***

(a) All Tax Returns with respect to Marlboro and/or the Real Property or the Transferred Assets required to be filed by Marlboro for any Pre-Closing Tax Period have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by Marlboro (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) Marlboro has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, tenured or adjunct faculty member, independent contractor, creditor, customer, or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) All deficiencies asserted, or assessments made, against Marlboro as a result of any examinations by any taxing authority have been fully paid.

(d) Marlboro is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(e) There are no Encumbrances for Taxes upon any of the Transferred Assets nor, to Marlboro's Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Transferred Assets (other than for current Taxes not yet due and payable).

(f) Marlboro is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

(g) Marlboro is not, and has not been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011 4(b).

(h) None of the Transferred Assets is (i) required to be treated as being owned by another person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, (ii) subject to Section 168(g)(1)(A) of the Code, or (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code.

xix. Financial Statements. Complete copies of the audited financial statements consisting of the Statement of Financial Position of Marlboro as of June 30 in each of the years 2017, 2018 and 2019 and the related statements of activities, changes in net assets and cash flow for the years then ended (the "**Audited Financial Statements**"), and unaudited financial statements consisting of the Statement of Financial Position of Marlboro as of February 29, 2020 and the related statements of activities, changes in net assets and cash flow for the eight month period then ended (the "**Interim Financial Statements**" and together with the Audited Financial Statements, the "**Financial Statements**") have been delivered to Emerson. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are based on the books and records of Marlboro, and fairly present in all material respects the financial condition of Marlboro as of the respective dates they were prepared and the results of the operations of Marlboro for the periods indicated. The Statement of Financial Position of Marlboro as of June 30, 2019 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**" and the Statement of Financial Position of Marlboro as of February 29, 2020 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". Marlboro maintains a standard system of accounting for Marlboro established and administered in accordance with GAAP.

xx. Undisclosed Liabilities. Marlboro has no material Liabilities except those set forth in *Marlboro's Disclosure Schedules, including Section 15xx of Marlboro's Disclosure*

Schedules, and in the schedules to the Creditors' Trust Agreement. Marlboro has not incurred any Liabilities since the Interim Balance Sheet Date other than Liabilities incurred in the normal course of business.

xxi. Absence of Certain Changes, Events and Conditions. Except as set forth in **Section 15xxi of Marlboro's Disclosure Schedules**, since the Interim Balance Sheet Date, Marlboro certifies, represents and warrants that there has not been any:

(a) material damage, destruction or loss to any of the Real Property, Tangible Personal Property or the Transferred Assets, whether or not covered by insurance;

(b) material change in any method of accounting or accounting practice for Marlboro, except as required by GAAP or as disclosed in the notes to the Financial Statements;

(c) Entry into any Contract or Lease or any other obligations that obligates Marlboro to payment of more than \$5,000 per year to any Person or entity or which effects the Real Property or the Transferred Assets;

(d) Incurrence, assumption or guarantee of any indebtedness for borrowed money in connection with Marlboro, the Real Property, Tangible Personal Property or the Transferred Assets;

(e) Transfer, assignment, lease, sale or other disposition of any of the Real Property, Tangible Personal Property or the Transferred Assets;

(f) Cancellation of any debts or claims related to the Real Property, Tangible Personal Property or the Transferred Assets;

(g) Transfer or assignment of or grant of any license or sublicense under or with respect to any Transferred Intellectual Property Assets;

(h) Abandonment or lapse of or failure to maintain in full force and effect any Intellectual Property Registration related to the Transferred Intellectual Property Assets;

(i) Acceleration, termination, material modification to or cancellation of any material Contract or Permit, other than the contracts terminated pursuant to the Contract Termination Notice;

(j) Imposition of any Encumbrance, other than Permitted Liens, upon any of the Tangible Personal Property or the Transferred Assets;

(k) Except as explicitly agreed to by Emerson, the grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of any current or former employees, officers, directors, tenured or adjunct faculty members, independent contractors or consultants of Marlboro, it being understood that all employees and faculty of Marlboro are being terminated by Marlboro with certain agreed upon payments being made by Marlboro; or

(l) Hiring or promoting any person.

(m) Any loan to (or forgiveness of any loan to), or entry into any other transaction with, any current or former directors, tenured or adjunct faculty, staff member, officers, trustees, or employees of Marlboro or to any other individual or entity;

(n) The adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law

(o) The purchase, lease or other acquisition in an amount greater than \$5,000 in any single transaction of the right to own, use or lease any property or assets;

(p) The renewal of any employment contract for any employee, tenured or adjunct faculty member as of the Interim Balance Sheet Date;

(q) Any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing; and

(r) Any claims made or actions, suits or proceedings or, to the Knowledge of Marlboro, any investigation by a Government Authority commenced or, to the Knowledge of Marlboro, threatened against Marlboro in relation to the Transferred Assets.

xxii. PPP Loan. Marlboro is qualified, under the CARES Act and other applicable law, to be a borrower and receive a loan under the Paycheck Protection Program. Marlboro has used the proceeds of the PPP Loan only for payroll costs and other costs that qualify for forgiveness in accordance with the CARES Act and the current rules and guidance issued by the U.S. Small Business Administration.

xxiii. Full Disclosure. No representation or warranty by Marlboro in this Agreement and no statement contained in Marlboro's *Disclosure Schedules* to this Agreement or any certificate or other document furnished or to be furnished to Emerson pursuant to this Agreement contains or will contain as of the Closing any untrue statement of a material fact, nor do they omit, or will they omit as of the Closing any material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. Marlboro acknowledges that Emerson is relying on the representations and warranties of Marlboro in entering into this Agreement.

16. Representations and Warranties Of Emerson

Except as set forth in the correspondingly numbered Section of Emerson's Disclosure Schedules, Emerson represents and warrants to Marlboro that the statements contained in this Section 16 ("Emerson's Representations and Warranties") are true and correct as of the date hereof and as of the Closing.

i. Organization and Qualification. Emerson is a nonprofit charitable corporation duly organized, validly existing, and in good standing under the laws of Massachusetts, with all

requisite power and authority, and all necessary consents, authorizations, approvals, orders, licenses, certificates, and permits of and from, and declarations and filings with, all federal, state, local, and other governmental authorities and all courts and other tribunals, to own, lease, license, and use its properties and assets and to carry on the businesses in which it is now engaged and the businesses in which it contemplates engaging except where any failure to hold any consent, authorization, approval, order, license, certificate, permit, declaration or filing would not materially limit the ability of Emerson to perform its obligations pursuant to this Agreement. Emerson is duly qualified to transact the businesses in which it is engaged and is in good standing as a foreign corporation in every jurisdiction in which its ownership, leasing, licensing, or use of property or assets or the conduct of its businesses makes such qualification necessary.

ii. Tax Exempt Status. Emerson is exempt from federal income taxes under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, and has received a determination letter from the Internal Revenue Service to that effect. Such determination letter is currently in full force and effect and has not been terminated, revoked or modified, and Emerson is in compliance with all of the terms and conditions contained in such determination letter. Emerson is not a “private foundation” within the meaning of § 509(a) of the Code. All filings necessary to maintain Emerson’s tax-exempt status under Section 501(c)(3) of the Code have been made by or on behalf of Emerson. Emerson has not done anything to impair its status as an organization qualifying for tax-exempt status under Section 501(c)(3) of the Code, and no circumstances have occurred that would disqualify Emerson as a tax-exempt organization under Section 501(c)(3) of the Code. There are no suits, actions or proceedings challenging or contesting Emerson’s tax-exempt status under Section 501(c)(3) of the Code, and Emerson has not received any letter or other communication from the IRS or any other person or entity regarding any possible action, formal or informal, that could result in the suspension or revocation of Emerson’s tax-exempt status under Section 501(c)(3) of the Code.

iii. Authority; No Conflicts; Consents. (1) Emerson has all requisite power and authority to execute, deliver, and perform this Agreement and each of the Ancillary Documents; (2) all necessary corporate proceedings of Emerson have been duly taken to authorize the execution, delivery, and performance of this Agreement and each of the Ancillary Documents by Emerson; and (3) this Agreement has been, and each of the Ancillary Documents when executed and delivered by Emerson will be, duly authorized, executed, and delivered by Emerson, constitutes the legal, valid, and binding obligation of Emerson, and is enforceable as to it in accordance with its terms. Except as set forth in ***Section 16iii of Emerson’s Disclosure Schedules*** no consent, authorization, approval, order, license, certificate, or permit of or from, or declaration or filing with, any federal, state, local, or other Governmental Authority or any court or other tribunal is required by Emerson for the execution, delivery, or performance of this Agreement or any Ancillary Document by Emerson. Except as set forth in ***Section 16iii of Emerson’s Disclosure Schedules***, no consent of any party to any contract, agreement, instrument, lease, license, arrangement, understanding, or other Contract to which Emerson is a party, or to which it or any of its properties or assets are subject, is required for the execution, delivery, or performance of this Agreement or any Ancillary Documents; and the execution, delivery, and performance of this Agreement and the Ancillary Documents will not violate, result in a breach of, conflict with, or (with or without the giving of notice or the passage of time

or both) entitle any party to terminate or call a default under any term of any such contract, agreement, instrument, lease, license, arrangement, understanding, or other Contract, or violate or result in a breach of any term of the certificate of incorporation (or other charter document) or by-laws of Emerson, or violate, result in a breach of, or conflict with any law, rule, regulation, Governmental Order, judgment, or decree binding on Emerson or to which any of its properties or assets are subject.

iv. Legal Proceedings. There are no Actions pending or, to Emerson's knowledge, threatened against or by Emerson or any Affiliate of Emerson that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement or that would otherwise materially affect Emerson's ability to perform its obligations pursuant to this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action

v. Full Disclosure. No representation or warranty by Emerson in this Agreement and no statement contained in *Emerson's Disclosure Schedules* to this Agreement or any certificate or other document furnished or to be furnished to Marlboro pursuant to this Agreement contains or will contain as of the Closing any untrue statement of a material fact, nor do they omit, or will they omit as of the Closing any material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. Emerson acknowledges that Marlboro is relying on the representations and warranties of Emerson in entering into this Agreement.

17. Covenants

A. *Conduct of Marlboro Prior to the Closing.* From the date hereof until the Closing Date, except as otherwise provided in this Agreement or consented to in writing by Emerson (which consent shall not be unreasonably withheld or delayed), Marlboro shall:

(i) regularly communicate in good faith with Emerson regarding the operation of Marlboro in support of preserving the Transferred Assets and facilitating the transfer of the Marlboro programs, Marlboro Students and Marlboro Faculty to Emerson as contemplated by this Agreement;

(ii) use its reasonable diligent efforts to work with its donors to remove all restrictions from Marlboro's restricted endowment funds and gifts;

(iii) preserve and maintain the Transferred Assets in the same condition as they were on the date of this Agreement, ordinary wear and tear excepted;

(iv) not enter into any new Contract or Lease that would create an Encumbrance upon or limit Marlboro's right to transfer the Transferred Assets, provided however that from the date of the mutual execution of this Agreement to the Closing Date, Marlboro may incur liabilities in the form of operating expenses, including trade payables and vendor expenses incurred in the ordinary course, provided further that Marlboro obtains Emerson's written consent prior to incurring any such expenses in excess of \$5,000 in a single transaction;

(v) not merge or consolidate with any entity;

(vi) maintain in effect all Insurance Policies with the same limits of coverage which it now carries with respect to the Marlboro Campus and the Transferred Assets; not adjust any insurance proceeds or settle any taking claim without Emerson's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed;

(vii) not renew or extend any employment agreement;

(viii) not fail to give notice to Emerson of the commencement of any material development to which Marlboro becomes aware;

(ix) to the extent provided for in this Agreement preserve in force all Permits required for the utilization of the Marlboro Campus and the Transferred Assets and assign such permits, if assignable, relating to the Transferred Assets on the Closing Date;

(x) pay the debts, Taxes and other obligations related to the Marlboro Campus and the Transferred Assets when due;

(xi) maintain all Books and Records and documents related to the Marlboro Campus and the Transferred Assets;

(xii) comply in all material respects with all Laws applicable to the ownership of the Marlboro Campus and the Transferred Assets;

(xiii) provide copies to Emerson of any written notices received from governmental or quasi-governmental organizations regarding any violations of Laws;

(xiv) obtain all required approvals to consummate the transactions contemplated by this Agreement;

(xv) not incur any debt in addition to, or in excess of, the debt shown on the Schedule of Indebtedness except as expressly authorized by this Agreement;

(xvi) work cooperatively with the Vermont State Board of Education, and any other required federal state or local regulatory body or agency to ensure all student records are properly transferred and preserved pursuant to all applicable state and federal laws;

(xvii) except as otherwise identified in **Section 15xv(c) of Marlboro's Disclosure Schedules**, terminate all employees and faculty and all employment contracts in accordance with applicable law including without limitation satisfying any obligations under the WARN Act (or any similar state or local Law); and

(xviii) take all actions, and do all things necessary to seek forgiveness of the PPP Loan based on the eight week spending period requirements (such eight week period having expired on or about June 4, 2020), including, without limitation, making such election as may be necessary to utilize the eight week protocol, and completing and submitting to the Bank all necessary applications and documentation in accordance with the CARES Act and the applicable rules and guidance from the U.S. Small Business Administration.

B. *Access to Financial Information and Books and Records.* From the date hereof until the Closing, Marlboro shall (a) afford Emerson and its Representatives full and free access during normal business hours to and the right to inspect all of the Transferred Assets, Books and Records, Contracts and other documents and data related to Marlboro, (b) furnish Emerson and its Representatives with such financial, operating and other data and information related to the Marlboro as Emerson or any of its Representatives may reasonably request; and (c) instruct the Representatives of Marlboro to cooperate with Emerson in its investigation of the Transferred Assets, Marlboro Campus and the Assumed Liabilities. No investigation by Emerson or other information received by Emerson shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Marlboro in this Agreement.

C. *No Solicitation of Other Bids.*

(i) Unless this Agreement is terminated, Marlboro shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal for the Transferred Assets; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal for the Transferred Assets; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal with regard to the Transferred Assets. Marlboro shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, “**Acquisition Proposal**” means any inquiry, proposal or offer from any Person (other than Emerson or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Transferred Assets.

(ii) In addition to the other obligations under this Section 17C, Marlboro shall promptly, and in any event within three days after receipt thereof by Marlboro or its Representatives, advise Emerson orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(iii) Marlboro agrees that the rights and remedies for noncompliance with this Section 17C shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Emerson and that money damages would not provide an adequate remedy to Emerson.

D. *Notice of Certain Events.*

(i) From the date hereof until the Closing, Marlboro upon becoming aware of any of the following shall promptly notify Emerson in writing of:

(1) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Marlboro hereunder not being true and correct in a material manner or (B) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 18B to be satisfied;

(2) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(3) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(4) any Actions commenced or, to Marlboro's Knowledge, threatened against, relating to or involving or otherwise affecting the Marlboro Campus, the Transferred Assets, the Assigned and Assumed Agreements or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to or that relates to the consummation of the transactions contemplated by this Agreement.

(ii) Emerson's receipt of information pursuant to this Section 17D shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Marlboro in this Agreement and shall not be deemed to amend or supplement the Disclosure Schedules.

E. *Employees and Employee Benefits.*

(i) Commencing on or prior to the Closing Date, Marlboro shall terminate all employees of Marlboro except those identified in ***Section 15xvi(c) of Marlboro's Disclosure Schedules***. Except as specifically provided in this Agreement, Emerson shall have no obligation to offer employment to any individual. Marlboro shall bear any and all obligations and liability under the WARN Act resulting from employment losses pursuant to this Section 17E.

(ii) Marlboro shall be solely responsible, and Emerson shall have no obligations whatsoever for, any compensation or other amounts payable to any current or former employee, officer, director, trustee, tenured or adjunct professor or teacher, staff, independent contractor or consultant of Marlboro, including, without limitation, hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Marlboro at any time on or prior to the Closing Date and the Creditors' Trustee shall pay all such amounts not paid at or prior to the Closing Date in accordance with Creditors' Trust Agreement from funds delivered to the Creditors' Trust by Marlboro at Closing.

(iii) Marlboro shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health (including, specifically, "COBRA" coverage), accident or disability benefits brought by or in respect of current or former employees, officers, directors, trustees, independent contractors or consultants of Marlboro or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring on or prior to the Closing Date. Marlboro also shall remain solely responsible for all worker's compensation claims of any current or former employees, officers, directors, trustees, independent contractors or consultants of Marlboro which relate to events occurring on or prior to the Closing Date. Marlboro shall pay, cause to be paid, or make available all such amounts to the appropriate persons as and when due.

(iv) To the extent required by the applicable plan document or applicable law, Marlboro shall cause the account balances under its defined contribution retirement plan of employees who become employed by Emerson, or an Affiliate of Emerson, in connection with the transactions contemplated by this Agreement, to be fully vested to the extent not already vested as of the Closing Date. Effective as soon as reasonably practicable following the Closing Date, Marlboro, or any applicable Affiliate or authorized representative, shall effect a transfer of assets and liabilities (including outstanding loans) from the defined contribution retirement plan that it maintains to the defined contribution retirement plan maintained by Emerson with respect to those employees of Marlboro who become employed by Emerson, or an Affiliate of Emerson, in connection with the transactions contemplated by this Agreement. Any such transfer shall be in an amount sufficient to satisfy Section 414(l) of the Code. Such transferred employees' accounts shall be credited with any Marlboro contributions due for the portion of the year before such transfer of accounts, and shall be credited without regard to any end-of-year or other service conditions for such contributions.

F. *Confidentiality.* From and after the Closing if Emerson or Marlboro are compelled to disclose any information by judicial or administrative process (excluding public records request provided to Emerson under applicable Law) or by other requirements of Law regarding this Agreement, Emerson or Marlboro shall promptly notify the other Party in writing and shall disclose only that portion of such information which Emerson or Marlboro is advised by its counsel in writing is legally required to be disclosed or necessary or appropriate to obtain the requisite approvals by each applicable Governmental Authority of the transactions contemplated herein.

G. *Third Party Consents.* To the extent that Marlboro's rights under any Assigned Contract, Assigned Lease or Permit constituting a Transferred Asset, or any other Transferred Asset, may not be assigned to Emerson without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Marlboro, at its expense, shall use its reasonable best efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Emerson's rights under the Transferred Asset in question so that Emerson would not in effect acquire the benefit of all such rights, Marlboro, to the maximum extent permitted by law and the Transferred Asset, shall act after the Closing as Emerson's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Transferred Asset, with Emerson in any other reasonable arrangement designed to provide such benefits to Emerson.

H. *Student Records.* Emerson agrees to comply with 16 V.S.A. §175 as the repository of the Marlboro Student Records.

I *Contract and Lease Termination; sales of Tangible Assets.* The Parties acknowledge that the amount of Marlboro Funds transferred to Emerson at or after the Closing will, in part, be affected by (i) Marlboro's contractual obligations after the Closing and (ii) proceeds received from the sale by Marlboro after the Closing of any tangible assets not transferred to Emerson. Marlboro and Emerson agree to work collaboratively with the goal of terminating any such contractual obligations and, other than with respect to the Archival Materials and the Real Estate Related Tangible Personal Property, selling such tangible assets (when such are no longer necessary for the continued operation of Marlboro after the Closing) as soon as practicable in order to minimize liability with respect to such contractual obligations, or maximize sales proceeds of such tangible assets. Marlboro shall keep Emerson informed as to the progress of negotiations with respect to the foregoing.

J. *Governmental Approvals and Consents.*

(i) Each party hereto shall, as promptly as possible, (i) make, or cause to be made, all filings with and submissions required under any Law applicable to such party or any of its Affiliates to; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from, all Governmental Authorities, that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals, including without limitation, taking the actions describe in Appendix C. The Parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(ii) Marlboro and Emerson shall use diligent efforts to give all notices to, and obtain all consents from, all third parties that are necessary to consummate this Agreement.

(iii) Without limiting the generality of the parties' undertakings pursuant to subsections (i) and (ii) above, each of the parties hereto shall use all reasonable best efforts to:

(1) respond to any inquiries by any Governmental Authority regarding the transactions contemplated by this Agreement or any Ancillary Document;

(2) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Document; and

(3) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Document has been issued, to have such Governmental Order vacated or lifted.

(iv) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before

any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Marlboro or Emerson with Governmental Authorities in the ordinary course, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

K. *Endowment.* Marlboro agrees to take all action necessary, including but not limited to commencing all judicial and regulatory actions, to cause the transfer to Emerson at the Closing of Marlboro's endowment and other investment assets. Subject to all applicable Laws, Marlboro agrees to not take any action to cause the transfer of the endowment and investment assets to any party other than Emerson; Marlboro shall join with Emerson to cause the transfer of such endowment and investment assets to Emerson free and clear of any claims, restrictions, or other Encumbrances other than Permitted Liens.

L. *Post-Closing Transfers.* From and after the Closing, if Marlboro receives or collects any funds relating to any Transferred Asset or that otherwise would be deemed to be Marlboro Funds if such had been received prior to the Closing, including without limitation payment of donations or bequests), Marlboro shall remit such funds to Emerson within five (5) Business Days after its receipt thereof. From and after the Closing, if Emerson receives or collects any funds relating to any Excluded Asset (including without limitation Archival Materials, Real Estate Related Tangible Personal Property, and other tangible assets referred to in Section 17I above), Emerson shall remit any such funds to Marlboro within five (5) Business Days after its receipt thereof.

M. *Marlboro Website.* Emerson agrees to maintain, from the Closing until the third anniversary of the Closing Date, the *Marlboro.edu* domain email functionality for Marlboro students, alumni, student/alumni groups, and faculty who had @marlboro.edu email accounts as of the Closing Date.

N. *Fundraising.* From and after the date hereof and until the Closing, Marlboro shall use its good faith efforts to solicit and collect donations and bequests, consistent with the manner, effort, and methods utilized by it in its customary past fundraising efforts.

O. *Closing Conditions.* From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in this Agreement.

P. *Public Announcements.* Unless otherwise required by applicable Law, no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media, students,

faculty or employee without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

18. **Closing Conditions**

A. *Conditions to Obligations of All Parties.* The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(i) The filings of Emerson and/or Marlboro pursuant to any required governmental law or regulation, shall have been made and any applicable waiting period and any extensions thereof shall have expired or been terminated;

(ii) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal or otherwise prohibited or causing any of the transactions contemplated hereunder to be rescinded following completion thereof;

(iii) Marlboro shall have received all consents, authorizations, orders and approvals from the Governmental Authorities, as applicable to it, referred to in Section 17J and Emerson shall have received all consents, authorizations, orders and approvals from the Governmental Authorities, as applicable to it, referred to in Section 17J, in each case, in form and substance reasonably satisfactory to Emerson and Marlboro, and no such consent, authorization, order and approval shall have been revoked; and

(iv) No Action shall have been commenced against any of the Parties, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby. No petition has been filed by or against the Parties under the federal Bankruptcy Code or any similar state or federal Law, whether now or hereafter existing.

B. *Conditions to Obligations of Emerson.* The obligations of Emerson to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Emerson's waiver, at or prior to the Closing, of each of the following conditions:

(i) Each of the representations and warranties of Marlboro contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects);

(ii) Marlboro shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date,

provided, that, with respect to agreements, covenants and conditions that are qualified by materiality, Marlboro shall have performed such agreements, covenants and conditions, as so qualified, in all respects;

(iii) The value of the Closing Assets shall not be less than the Closing Asset Target Amount;

(iv) The Campus shall have been sold to a third party and Marlboro shall have received all payments therefor;

(v) Marlboro shall have delivered to Emerson duly executed counterparts to the Ancillary Documents and copies of any other Marlboro Closing Deliverables; and

(vi) Marlboro demonstrates that during the eight week period after Marlboro received the first disbursement of the PPP Loan that it spent proceeds of the PPP Loan only on forgivable costs in a manner consistent with the criteria and preconditions necessary to entitle it to forgiveness of the amount of the PPP Loan based on the terms of the CARES Act and the rules and guidance that were available from the U.S. Small Business Administration at the time of the expenditures.

C. *Conditions to Obligations of Marlboro.* The obligations of Marlboro to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Marlboro's waiver, at or prior to the Closing, of each of the following conditions:

(i) Each of the representations and warranties of Emerson contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality) or in all material respects (in the case of any representation or warranty not qualified by materiality) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects);

(ii) Emerson shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, Emerson shall have performed such agreements, covenants and conditions, as so qualified, in all respects;

(iii) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby; and

(iv) Emerson shall have delivered to Marlboro duly executed Ancillary Documents and copies of any other Emerson Closing Deliverables.

19. **Rights to Termination.**

A. *Termination.* This Agreement may be terminated at any time prior to the Closing:

(i) by the express mutual written consent of Marlboro and Emerson and signed by an authorized officer or each of Marlboro and Emerson;

(ii) by Emerson or Marlboro in the event that there shall be any Law that makes consummation or the transactions contemplated by this Agreement illegal or otherwise prohibited;

(iii) by Emerson or Marlboro in the event that any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable;

(iv) by Emerson or Marlboro in the event all applicable approvals, consents and or orders have not been granted by a Governmental Authority by July 31, 2020, if such approval, consent or order is necessary for this transaction to proceed;

(v) by Emerson by written notice to Marlboro if any of the conditions set forth in Sections 18A or 18B shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by July 31, 2020, unless such failure shall be due to the failure of Emerson to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(vi) by Marlboro by written notice to Emerson if any of the conditions set forth Sections 18A or 18C shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by July 31, 2020, unless such failure shall be due to the failure of Marlboro to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing.

B. *Effect of Termination.* If this Agreement is terminated as described in Section 19A, this Agreement shall become null and void and of no further force and effect and there shall be no liability on the part of any Party or any of its Affiliates, directors, trustees, officers, shareholders, partners, members or Representatives, except (i) that the provisions of Sections 6, 7A (other than the last sentence), and this Section 19B shall survive termination, and (ii) following the termination of this Agreement, nothing herein shall relieve any Party from liability for any intentional and material breach of this Agreement. Each Party (the “**Recipient**”) shall promptly cause to be returned to the other Party (the “**Discloser**”) or its designated Representatives all documents and information obtained from the Discloser in connection with this Agreement and all documents and information obtained from the Discloser in connection with each Party’s investigation of the other Party, including any copies made by Recipient or its Representatives of any such documents or information and take all other such action as required to protect confidential information of the other Party.

20. **Notices**

All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 20):

If to Emerson:

Emerson College
Attn: Paul Dworkis, Vice President of
Administration and Finance
120 Boylston Street
Boston, MA 02116
Email: paul_dworkis@emerson.edu

with a copy to:

Holland & Knight LLP
Attn: Paul Lannon, Esq.
10 St. James Avenue, 11th Floor
Boston, MA 02116
Email: paul.lannon@hklaw.com

If to Marlboro:

Marlboro College
Attn: President
2582 South Road
Marlboro, VT 05344
Email: kevin@marlboro.edu

with a copy to:

Dinse P.C.
Attn: Jeff McMahan
209 Battery Street
P.O. Box 988
Burlington, VT 05402-0988
Email: jmcmahan@dinse.com

21. **Interpretation**

For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

22. **Headings**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

23. **Miscellaneous**

This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns; except that neither Party may assign or otherwise transfer this Agreement, by operation of law or otherwise (including by merger, reorganization, consolidation, change of control, or sale of all or substantially all of the Party’s assets to which this Agreement pertains), without written consent of the other Party. Any assignment or transfer of this Agreement in violation of the foregoing shall be null and void. This Agreement will be interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles. This Agreement contains the entire agreement between the Parties and supersedes all prior written and oral agreements between the Parties, including but not limited to the Term Sheet and Prior NDA. If a court or other body of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. No provision of this Agreement may be waived except by a writing executed by the Party against whom the waiver is to be effective. A Party’s failure to enforce any provision of this Agreement shall neither be construed as a waiver of the provision nor prevent the Party from enforcing any other provision of this Agreement. No provision of this Agreement may be amended or otherwise modified except by a writing signed by the Parties to this Agreement. The Parties may execute this Agreement in counterparts, each of which shall be deemed an original, but all of which together constitute one and the same agreement. This Agreement may be delivered by email or facsimile transfer, and pdf or facsimile copies of executed signature pages shall be binding as originals.

24. **No Third-Party Beneficiaries**

This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity (including, without limitation, any student, faculty member, or other employee or contractor of Marlboro) any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement as of the Effective Date.

**THE CORPORATION OF
MARLBORO COLLEGE**

DocuSigned by:

By: 28ED1DA84F0847B...
Name: Kevin F.F. Quigley
Title: President

EMERSON COLLEGE

DocuSigned by:

By: BC2EF15FE7D3462...
Name: M. Lee Pelton
Title: President

APPENDIX A

TERMS AND CONDITIONS OF MARLBORO FACULTY APPOINTMENT

1. Emerson will honor all tenure appointments of Marlboro Faculty, with tenure-track faculty resetting their tenure clock as they enter Emerson. All tenure-track faculty will be eligible for the nexus mentoring and faculty development funds provided currently under Emerson's Faculty Handbook and could be eligible for early tenure based on their third-year and fourth-year reviews.
2. All tenured Marlboro Faculty will enter Emerson at the Associate Professor rank and will be eligible for promotion to full Professor after five years in accordance with the Faculty Handbook.
3. Many Marlboro Faculty will enter Emerson with a primary appointment within the Institute. Some Marlboro Faculty may have their primary appointment in the discipline-based departments (e.g., the performing arts department (PA), the visual and media arts department (VMA), and the writing, literature, and publishing department (WLP)). A list of Marlboro Faculty and the locus of their appointment is attached to this Appendix A. Marlboro Faculty who have their primary appointment in a discipline-based department will be affiliated with the Institute, may teach courses cross-registered to the Institute and are welcome to take part in the Liberal Arts Council.
4. Tenured Marlboro Faculty will all start at Emerson at a salary level of \$[] per year and will thereafter (during the term of the ECCAAUP collective bargaining agreement) receive cost-of-living increases in accordance with section 15.2 of the collective bargaining agreement. Notwithstanding the foregoing, given the uncertainty surrounding the COVID-19 global pandemic, Emerson may find it necessary to negotiate with the Emerson faculty union changes to salaries and benefits of Emerson faculty generally, and such changes will also apply to Marlboro Faculty, notwithstanding the terms of this Agreement or of the template appointment letters. With respect to promotion to full professor, tenured Marlboro Faculty may, in addition to research/creative work completed at Emerson, include work that was published during the transitional academic year 2019-2020 for full consideration. All other research/creative work completed since tenure but before academic year 2019-2020 may be considered in a dossier for promotion as evidence of coherence and trajectory, but not as items toward a productivity (i.e., quantity) standard. All tenured Marlboro Faculty will be governed by the tenure and promotion standards of their department and terms of their appointment letter.
5. Tenure-track Marlboro Faculty will begin at "year zero" on the Emerson salary model, consistent with their tenure clock reset, at a salary level of \$[] per year and will thereafter (during the term of the ECCAAUP collective bargaining agreement and until their tenure or promotion or their terminal year) receive cost-of-living increases in accordance with section 15.2 of the collective bargaining agreement. Notwithstanding the foregoing, given the uncertainty surrounding the COVID-19 global pandemic, Emerson may find it necessary to negotiate with the Emerson faculty union changes to salaries and benefits of Emerson faculty

generally, and such changes will also apply to Marlboro Faculty, notwithstanding the terms of this Agreement or of the template appointment letters. Since tenure-track faculty are starting their tenure clock over, none of their Marlboro work will count towards promotion or tenure. All tenure-track Marlboro faculty will be governed by the tenure and promotion standards of their department and provided with their appointment letter.

6. The only applicable exceptions to Emerson's obligation to appoint Tenured Marlboro Faculty and Tenure-track Marlboro Faculty shall be any prior egregious conduct, such as sexual harassment, sexual misconduct, commission of a crime, plagiarism, embezzlement, fraud, breach of fiduciary or other duty owed Marlboro, or other serious misconduct.

The template forms of appointment letters are attached hereto as Attachment 1.

List of Marlboro Faculty and Appointments

See attached.

Marlboro Faculty Appointments

Name	Title	School	Department
Dr. Jennifer Giro	Assistant Professor	Institute for Liberal Arts and Interdisciplinary Studies	
Dr. Ian McManus	Assistant Professor	Institute for Liberal Arts and Interdisciplinary Studies	
Dr. Rituparna Mitra	Assistant Professor	Institute for Liberal Arts and Interdisciplinary Studies	
Amer Latif	Associate Professor	Institute for Liberal Arts and Interdisciplinary Studies	
Adam Franklin-Lyons	Associate Professor	Institute for Liberal Arts and Interdisciplinary Studies	
Seth Harter	Associate Professor	Institute for Liberal Arts and Interdisciplinary Studies	
Matt Ollis	Associate Professor	Institute for Liberal Arts and Interdisciplinary Studies	
Jaime Tanner	Associate Professor	Institute for Liberal Arts and Interdisciplinary Studies	
Sara Salimbeni	Associate Professor	Institute for Liberal Arts and Interdisciplinary Studies	
Todd Smith	Associate Professor	Institute for Liberal Arts and Interdisciplinary Studies	
Nelli Sargsyan	Associate Professor	Institute for Liberal Arts and Interdisciplinary Studies	
William Edelgrass	Associate Professor	Institute for Liberal Arts and Interdisciplinary Studies	
Amy Beecher	Assistant Professor	School of the Arts	Visual and Media Arts
Dr. Matan Rubinstein	Associate Professor	School of the Arts	Performing Arts
Kristin Horrigan	Associate Professor	School of the Arts	Performing Arts
Dr. Brenda Foley	Associate Professor	School of the Arts	Performing Arts
Dr. Felicity Ratté	Associate Professor	School of the Arts	Visual and Media Arts
Dr. Rosario de Swanson	Associate Professor	School of the Arts	Writing, Literature and Publishing
Kate Ratcliff	Emerita Affiliated faculty	Institute for Liberal Arts and Interdisciplinary Studies	
Jenny Ramstetter	Emerita Affiliated faculty	Institute for Liberal Arts and Interdisciplinary Studies	

APPENDIX A – ATTACHMENT 1

Template for Assistant Professors, on letter-head:

DATE, 2020

Dear :

On my recommendation and that of the provost, I am pleased to offer you an appointment to the faculty of Emerson College for the 2020-2021 academic year at the rank of Assistant Professor in the [UNIT]. This appointment begins on August 20, 2020 and concludes on August 31, 2021. Your base salary will be \$[] for the nine-month academic year, which will be paid in twenty-five semi-monthly installments beginning on August 30, 2020. Given the uncertainty surrounding the COVID-19 global pandemic, Emerson may find it necessary to negotiate with the Emerson faculty union changes to salaries and benefits of Emerson faculty generally, and such changes will apply to you, notwithstanding the terms of this appointment letter. For the same reasons, Emerson may find it necessary to alter its academic calendar, alter the start dates or modality of teaching (on-line versus in person) and take other actions with respect to, or that may affect Emerson faculty generally (including, without limitation, lay-off or furloughs), and such alterations or actions will also apply to you, notwithstanding the terms of this appointment letter.

You will be eligible to receive annual re-appointments in this faculty position. After your fifth year of full-time faculty status, you will become eligible for your tenure review in the [UNIT] during the 2025-2026 academic year. The departmental standards for tenure and promotion for the [UNIT] put into effect in December 2017, are available at this link: <https://www2.emerson.edu/academic-affairs/promotion-tenure-standards>. If you elect not to go up for tenure, or if the College does not award you tenure, then the 2026-2027 academic year will be your terminal year at the College.

By accepting a full-time appointment to the College, you are committing to be full-time in the most inclusive sense; you will give the College your primary professional commitment and will arrange outside obligations, financial interests and activities so as not to conflict or interfere with your commitment to the College. Emerson expects that full-time faculty teach in-residence on the Boston campus or online. I must advise you of Emerson's policy, as provided in the ECCAAUP Collective Bargaining Agreement, art. 13.3.2, that Emerson faculty may not hold a full-time or part-time teaching position outside the College during the academic year, except pursuant to a Professional or Special leave approved in advance.

This appointment is subject to all rules, regulations and policies of the College. As an Assistant Professor on the tenure track, you are eligible for benefits as detailed in the current ECCAAUP Collective Bargaining Agreement (August 2018). Emerson provides benefits-eligible faculty with highly competitive and comprehensive benefit programs that enable you to invest in your health and well-being, participate in our retirement program, and plan for your financial future. A summary of Benefits for Full-Time Faculty Governed by the ECCAAUP Collective Bargaining Agreement, which describes the College's benefits program administered through the Office of Human Resources, is available at this link: <https://hr.emerson.edu/hc/en-us/articles/360020935234-Full-Time-Tenure-Tenure-Track-Faculty>. In compliance with Article 5.1 of the ECCAAUP contract, a dues deduction form for ECCAAUP membership will be emailed to you over the summer, should you wish to join the ECCAAUP.

Each tenure-line faculty member is expected to perform teaching, research and service duties. Your primary teaching responsibilities are in the areas of [TEACHING AREAS]. Teaching assignments may include introductory, intermediate, or advanced courses, [ANY ADDITIONAL INFO] as the demands of

course registration and scheduling may require. Your duties in the first year include teaching and maintaining an active program of research. The normal teaching workload is set forth in Article 13.2 of the ECCAAUP Collective Bargaining Agreement (August 2018), and the faculty workload policies are set forth in Section 14 of the Emerson College Faculty Handbook (available on the web at <http://www.emerson.edu/sites/default/files/Files/Academics/academic-affairs-faculty-handbook.pdf>). In essence, the standard workload for Assistant Professors is five classes per academic year with a sixth equivalency given for research or scholarly and creative work. Because of the unique nature of this transition, however, there may be some variability in course assignments during the 2020-21 academic year, as circumstances may require.

While first-year faculty are exempt from committee service, there are numerous other service activities available that introduce you to colleagues and to the College, such as events for prospective and accepted students; new student and/or transfer student orientations; parent's weekend events; assessing Marlboro student individually designed interdisciplinary program proposals and projects; and alumni events.

An integral part of your appointment is annual attendance at the Faculty Institute and participation in the New Faculty Orientation (dates will be forthcoming), as well as completion of a designated Title IX training. Currently, the training course is an online program from the vendor EverFi. In addition, you are expected to attend Faculty Assembly, monthly [UNIT] meetings, and [IF APPLICABLE: Liberal Arts Council meetings that convene once or twice a semester].

Emerson College is required by federal law to verify the identity and work authorization of all new employees. You will be asked by a representative of the College to complete the Form I-9 (Employment Verification Form) no later than the close of business on the 3rd day after your start date. Accordingly, this offer is also contingent upon presentation of appropriate evidence of your identity and authorization to work for the College. Failure to satisfy this requirement is grounds for withdrawal of the offer and/or termination of employment at the College. Upon acceptance of this offer, the College will assess any potential needs for employment sponsorship and, if necessary and proper, sponsor you for the appropriate nonimmigrant visa category (i.e., H-1B, TN, O-1, etc.). If you are residing abroad, you will also be required to apply for the appropriate nonimmigrant visa at a U.S. Consulate. It is your responsibility to obtain all required visas in a timely fashion. If your entry and start date with Emerson are delayed because of the lack of a required visa, Emerson may withdraw of your offer and/or terminate your employment at the College.

This offer letter is also contingent on verification of conferral of the highest degree on your curriculum vita. Upon onboarding in our Workday system, you will be contacted via email by Accurate, our education check vendor, to verify your highest degree earned. Please be sure to list only your highest degree.

The College will provide you with shared office space, including access to a telephone and a printer. It is our understanding that you will bring your own computer. If you need particular hardware or software that is not standard to Emerson College, please let me know so we can explore options to accommodate your research needs. In addition, you will be given \$2,500 per year in faculty development funds which will be administered by the [UNIT]. You can view the Annual Report of Campus Security and Crime Statistics on the web at <http://www.emerson.edu/about-emerson/offices-departments/police/clery-report>.

As a leader in arts and communication, Emerson is committed to academic excellence. You will find Emerson to be a welcoming diverse community that values inclusive excellence, global and civic engagement, and innovation. Your responsibilities to the College are full-time in the most inclusive sense, and I hope that you will participate in the rich campus and cultural opportunities available.

Your colleagues in the [UNIT] and across the College are eager for you to join the Emerson faculty next year, as am I. We look forward to welcoming you to the Emerson community and hope you will accept this offer of employment.

Should you have any questions about this offer, please do not hesitate to contact me at (617) 824-8756.

Sincerely,

Dean of

cc: M. Lee Pelton, President
Michaele Whelan, Provost
Anne Doyle, Assistant Vice President for Academic Affairs
Ann-Marie Driscoll: Director, Compensation & Benefits
Matthew Finn, Assistant Director of Faculty Administration and Information

Template for Associate Professors, on letter-head:

[DATE], 2020

Dear :

On my recommendation and that of the provost, I am pleased to offer you an appointment to the faculty of Emerson College for the 2020-2021 academic year at the rank of Associate Professor with tenure in the [UNIT]. This appointment begins on August 20, 2020 and concludes on August 31, 2021. Your base salary for the nine-month academic year will be will be \$[_____], paid in twenty-five semi-monthly installments beginning on August 30, 2020. Given the uncertainty surrounding the COVID-19 global pandemic, Emerson may find it necessary to negotiate with the Emerson faculty union changes to salaries and benefits of Emerson faculty generally, and such changes will apply to you, notwithstanding the terms of this appointment letter. For the same reasons, Emerson may find it necessary to alter its academic calendar, alter the start dates or modality of teaching (on-line versus in person) and take other actions with respect to, or that may affect Emerson faculty generally (including, without limitation, lay-off or furloughs), and such alterations or actions will also apply to you, notwithstanding the terms of this appointment letter.

You will be eligible to receive annual re-appointments in this faculty position. In accordance with the Faculty Handbook, section 11.1.1.3, after your fifth year as an Associate Professor at the College, you will become eligible to apply for promotion to Professor in the [UNIT]. In addition to research/creative work completed at Emerson, which is the focus of the dossier, you may also include work that was published during the transitional academic year 2019-20 for full consideration. All other research/creative work completed since tenure but before academic year 2019-2020 may be considered in a dossier for promotion as evidence of coherence and trajectory, but not as items toward a productivity (i.e. quantity) standard. The departmental standards for tenure and promotion for the [UNIT], put into effect in December 2017, are available at this link: <https://www2.emerson.edu/academic-affairs/promotion-tenure-standards> .

By accepting a full-time appointment to the College, you are committing to be full-time in the most inclusive sense; you will give the College your primary professional commitment and will arrange outside obligations, financial interests and activities so as not to conflict or interfere with this commitment to the College. It is expected that full-time faculty teach in-residence on the Boston campus or online. I must advise you of Emerson's policy, as provided in the ECCAAUP Collective Bargaining Agreement, art. 13.3.2, that Emerson faculty may not hold a full-time or part-time teaching position outside the College during the academic year, except pursuant to a Professional or Special leave approved in advance.

This appointment is subject to all rules, regulations and policies of the College. As an Associate Professor, you are eligible for benefits as detailed in the current ECCAAUP Collective Bargaining Agreement (August 2018). Emerson provides benefits-eligible faculty with highly competitive and comprehensive benefit programs that enable you to invest in your health and well-being, participate in our retirement program, and plan for your financial future. A summary of Benefits for Full-Time Faculty Governed by the ECCAAUP Collective Bargaining Agreement, which describes the College's benefits program administered through the Office of Human Resources, is available at this link: <https://hr.emerson.edu/hc/en-us/articles/360020935234-Full-Time-Tenure-Tenure-Track-Faculty>. In compliance with Article 5.1 of the ECCAAUP contract, a dues deduction form for ECCAAUP membership will be emailed to you over the summer, should you wish to join the ECCAAUP.

Each tenure-line faculty member is expected to perform teaching, research and service duties. Your primary teaching responsibility is in the area of [TEACHING AREA]. Teaching assignments may include introductory, intermediate, or advanced courses, [ANY ADDITIONAL INFO] as the demands of

course registration and scheduling may require. Your duties in the first year include teaching, maintaining an active program of research, and service. The normal teaching workload is set forth in Article 13.2 of the ECCAAUP Collective Bargaining Agreement (August 2018), and the faculty workload policies are set forth in Section 14 of the Emerson College Faculty Handbook (available on the web at <http://www.emerson.edu/sites/default/files/Files/Academics/academic-affairs-faculty-handbook.pdf>). In essence, the standard workload for Associate Professors is five classes per academic year with a sixth equivalency given for research or scholarly and creative work. Because of the unique nature of this transition, however, there may be some variability in course assignments during the 2020-21 academic year, as circumstances may require.

An integral part of your appointment is annual attendance at the Faculty Institute and participation in the New Faculty Orientation (dates will be forthcoming), as well as completion of a Title IX training course. Currently, the training course is an online program from the vendor EverFi. In addition, you are expected to attend Faculty Assembly and monthly department meetings.

Emerson College is required by federal law to verify the identity and work authorization of all new employees. You will be asked by a representative of the College to complete the Form I-9 (Employment Verification Form) no later than the close of business on the 3rd day after your start date. Accordingly, this offer is contingent upon presentation of appropriate evidence of your identity and authorization to work for Emerson College. Failure to satisfy this requirement is grounds for withdrawal of the offer and/or termination of employment at Emerson College. Upon acceptance of this offer, the College will assess any potential needs for employment sponsorship and, if necessary and proper, sponsor you for the appropriate nonimmigrant visa category (i.e., H-1B, TN, O-1, etc.). If you are residing abroad, you will be required to also apply for the appropriate nonimmigrant visa at a U.S. Consulate. It is your responsibility to obtain all required visas in a timely fashion. If your entry and start date with Emerson are delayed because of the lack of a required visa, Emerson may withdraw of your offer and/or terminate your employment at the College.

This offer letter is also contingent on verification of conferral of the highest degree on your curriculum vita. Upon onboarding in our Workday system, you will be contacted via email by Accurate, our education check vendor, to verify your highest degree earned. Please be sure to list only your highest degree.

The College will provide you with shared office space and access to a telephone and a printer. It is our understanding that you will bring your own computer. If you need particular hardware or software that is not standard to Emerson College, please let your Chair and me know so we can explore options to accommodate your research needs. In addition, you will be given \$2,500 per year in faculty development funds which will be administered by the [UNIT]. You can view the Annual Report of Campus Security and Crime Statistics on the web at <http://www.emerson.edu/about-emerson/offices-departments/police/clery-report>.

As a leader in arts and communication, Emerson is committed to academic excellence. You will find Emerson to be a welcoming diverse community that values inclusive excellence, global and civic engagement, and innovation. Your responsibilities to the College are full-time in the most inclusive sense, and I hope that you will participate in the rich campus and cultural opportunities available.

Your colleagues in the [Unit] and across the College are eager for you to join the Emerson faculty next year, as am I. We look forward to welcoming you to the Emerson community and hope you will accept this offer of employment.

Should you have any questions about this offer, please do not hesitate to contact me at (617) 824-8756.

Sincerely,

[NAME]

Dean of [UNIT]

cc: M. Lee Pelton, President
Michael Whelan, Provost
Anne Doyle, Assistant Vice President for Academic Affairs
Ann-Marie Driscoll: Director, Compensation & Benefits
Matthew Finn, Assistant Director of Faculty Administration and Information

APPENDIX B

INSTITUTE PROGRAMMING

1. Following both Marlboro and Emerson current practices, curriculum development and approval originate with faculty and move through the standard Emerson review process, and the Marlboro Institute faculty in collaboration with their faculty colleagues will have responsibility to develop and implement curriculum following the Emerson faculty governance model.
2. Emerson agrees to use reasonable efforts to support Marlboro's liberal arts mission as expressed in the Marlboro Promise --supporting a program in the Marlboro Institute anchored by Marlboro's three learning goals: to write with clarity and precision; to work, live, and communicate with a wide range of individuals; and to lead an ambitious project from idea to execution -- while simultaneously forging a new model that also meets Emerson's academic and curricular requirements. The Emerson and Marlboro working groups have collaboratively created a four-year academic model for the Marlboro Institute, the details of which are attached to this Appendix B. This program includes yearly Marlboro Institute courses that support student independent and interdisciplinary work and culminates with a capstone experience that includes a project. It is understood that all curricular decisions must still pass through Emerson's faculty governance model.
3. All Marlboro Students arriving at Emerson at a Junior 2 status or above, currently on Plan at Marlboro, will be able to complete their Plan at Emerson within the context of the courses offered at Emerson.

APPENDIX B – ATTACHMENT I

	Fall	Spring
Year 1	WR101	WR121
	IN100 FYS	CC100* to be taken in first two years
	MI190 NEW	Liberal Arts
	Liberal Arts	Liberal Arts
Year 2	Liberal Arts	MI290 NEW
	Liberal Arts	Major related course
	Major related course	Liberal Arts
	Elective	Elective
Year 3	Major related course	MI390 NEW
	Major related course	Major related course
	Major related course	Elective
	Elective	Elective
Year 4	MI490 Capstone NEW	MI490 Capstone NEW
	MI490 or Major related course	MI490 or Major related course
	Elective	Elective
	Elective	Elective
Count	Liberal Arts	40-52
	Marlboro IDIP Major	52
	Electives	24-36
	Total Credits	128

MI190 Ways of Knowing (4 credits, Fall) Cap=20. Open to MI students only.

Course Description: Shaped by student interests, this course aims to foster self-direction, agency, and community-building. Through the introduction and modeling of interdisciplinary modes of inquiry, students address questions across selected disciplines. Students learn how to pursue a genuine question and evaluate evidence in the liberal arts through individualized, as well as collaborative, inquiry-based learning. Students will work to develop, research, and communicate answers to the emergent questions both individually and collaboratively.

MI290 Sophomore Seminar: Project-Based Learning (4 credits, Spring) Cap=20.

Course Description: This course is intended to introduce project-based learning. Course materials will focus on a set of key problems and their relationship to each student's proposed courses and curricular focus. Emphasis will be placed on the benefits of working across and between disciplines in order to

generate and pursue a research question and develop critical reflection skills. The course guides students in the multi-step process of completing a sustained project. Prerequisites: Sophomore standing and completion of MI190.

MI390 Junior Seminar: Theories, Sources, and Methods (4 credits, Spring) Cap=15.

Course Description: Responding to students' topical and disciplinary interests, this seminar supports juniors in developing skills and gaining familiarity with bodies of knowledge needed to work at an advanced undergraduate level in one or more related fields. Students will identify a methodological approach for capstone work and articulate why this method is appropriate to their aims. They will learn to navigate key terms, theories, and debates related to questions and problems they plan to explore in capstone work. Students will also consider audiences and applications for their work both within and beyond the academic context as they lay a strong foundation for independent interdisciplinary work. Prerequisites: Junior standing and completion of MI290.

MI490 Senior Seminar: Capstone in Interdisciplinary Studies (8-16 credits) Cap=10.

Course Description: Advanced work toward completion of the interdisciplinary capstone project(s) required for a Marlboro Institute IDIP degree. This seminar involves students reviewing each other's work and collaboration on their research processes. It supports students as they work with readers/viewers and content in their chosen fields. In the Spring, each student's capstone project(s) is (are) evaluated in an oral examination by a committee including an external examiner. This determines the student's grade for all MI490 credits. Prerequisites: Senior standing and completion of MI390. May be repeated for credit, with a minimum of 8 credits and a maximum of 16 credits spread over one year.

APPENDIX C**SCHEDULE FOR CERTAIN ACTIONS**

Obligation	Responsible Parties	Deadline
<ul style="list-style-type: none"> (i) Notify the Vermont Attorney General of the transfer of assets to Emerson. (ii) Notify VT Commissioner of Taxes (iii) Notify NECHE (iv) Notify US Department of Education (v) Notify Vermont Department of Education 	Marlboro	<ul style="list-style-type: none"> Notice to Vermont AG at least 20 days before closing 10 days before Closing On or before the date of this Agreement On or before the date of this Agreement Done
<ul style="list-style-type: none"> (i) Notify NECHE (ii) Notify Massachusetts Attorney General (iii) Massachusetts Department of Higher Education (iv) Notify Emerson Bondholders 	Emerson	<ul style="list-style-type: none"> On or before the date of this Agreement On or before the date of this Agreement On or before the date of this Agreement 10 Business Days after date of this Agreement

APPENDIX D

LIST OF TRANSFERRED ASSETS AND ASSOCIATED DOCUMENTATION

- A. *Transferred Assets.* The Transferred Assets shall consist of the following:
- (i) Marlboro Funds (less the Allowance), including without limitation, all of Marlboro's cash, cash equivalents, accounts receivable, and notes receivable.
 - (ii) Those contracts and agreements set forth on the attached *Emerson's Acquisition Schedule "A"* (the "Assigned Contracts");
 - (iii) Those leases set forth on the attached *Emerson's Acquisition Schedule "B"* (the "Assigned Leases");
 - (iv) The Intellectual Property Contracts and Leases as set forth on the attached *Emerson's Acquisition Schedule "C"* (the "Assigned Intellectual Property Contracts And Leases" and collectively with the Assigned Contracts and Assigned Leases, the "Assigned and Assumed Agreements");
 - (v) The Intellectual Property Assets set forth on the attached *Emerson's Acquisition Schedule "D"* (the "Transferred Intellectual Property Assets");
 - (vi) The owned furniture, fixtures, equipment, machinery, tools, vehicles, office equipment, lab equipment, supplies, computers, telephones and other tangible personal property as described on the attached *Emerson's Acquisition Schedule "E"* (the "Tangible Personal Property");
 - (vii) To the extent assignable, all Permits which are held by Marlboro and utilized for the ownership and use of the Transferred Assets;
 - (viii) All of Marlboro's rights under all warranties, indemnities and all similar rights against third parties to the extent related to any Transferred Assets as further described on the attached *Emerson's Acquisition Schedule "F"*;
 - (ix) Subject to the approval of a court of competent jurisdiction endowment and other investments as set forth on the attached *Emerson's Acquisition Schedule "G"*;
 - (x) All credits, rebates and reimbursements regarding, relating to or emanating from the Transferred Assets;
 - (xi) All credits, rebates, reimbursements or return of premiums from any insurance policy purchased by Marlboro on or after the Closing Date;
 - (xii) Those books, records and manuals required by Emerson to operate and maintain the Transferred Assets;

(xiii) Subject to receipt of any required consents and authorization, all records relating to alumni and donors to Marlboro; and

(xiv) Subject to receipt of any required consents and authorizations, all student records and employment records of the Marlboro Students and the Marlboro Faculty, respectively.

B. *Excluded Assets.* Notwithstanding the foregoing, the Transferred Assets shall not include the Archival Materials, the Real Estate Related Tangible Personal Property, or the following assets (collectively, the “**Excluded Assets**”):

- (i) The Real Property, including the Marlboro Campus;
- (ii) Any furniture, fixtures, equipment, machinery, and other tangible personal property that are not Tangible Personal Property;
- (iii) Contracts that are not Assigned Contracts (the “**Excluded Contracts**”);
- (iv) Leases, that are not Assigned Leases (the “**Excluded Leases**”);
- (v) Intellectual Property Contracts, licenses, sublicenses and Leases that are not Assigned Intellectual Property Contracts And Leases (the “**Excluded Intellectual Property Contracts**”);
- (vi) Intellectual Property Assets that are not Transferred Intellectual Property Assets;
- (vii) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Marlboro;
- (viii) Marlboro’s charter, accreditation, or other authorization allowing it to operate an institution of higher learning in the State of Vermont;
- (ix) Except as otherwise specifically provided for herein, any employment records of Marlboro of any type for any time period;
- (x) all Benefit Plans and assets attributable thereto;
- (xi) Directors & Officers and Error & Omission insurance policies, and any rebates or return of premiums thereunder or related thereto to the extent such premiums were paid by Marlboro prior to the Closing Date;
- (xii) any leases or licenses with respect to occupancy of Persons on any part of the Marlboro Campus or any other agreement related to occupancy of Persons on any part of the Marlboro Campus;
- (xiii) the rights which accrue or will accrue to Marlboro under this Agreement and the Ancillary Documents;

(xiv) any property and equipment that is leased by Marlboro and not specifically assumed in this Agreement;

(xv) any books and records of Marlboro not required for the ownership or maintenance of the Transferred Assets;

(xvi) any historical archival records or memorabilia, including students' academic projects;

(xvii) a National Endowment for the Humanities Grant referred to as "People, Places, and the History of the Written Word in Brattleboro, Vermont". CFDA 45.130 together with the tradename "Common Good Vermont";

(xviii) the [REDACTED] Gift Annuity, which consists of a principal balance of \$30,000;

(xix) the Archival Materials identified on Appendix F; and

(xx) any Marlboro Funds that a Government Authority has determined may not be transferred to Emerson.

APPENDIX E

CREDITORS' TRUST

See attached.

POTASH CREDITORS' TRUST AGREEMENT

This trust, dated as of _____, 2020, is established for the purpose of providing for distribution of proceeds of sale of certain property of The Corporation of Marlboro College (“**Settlor**”) to and for the benefit of those creditors holding unsatisfied claims and is in all respects to be governed by and administered in accordance with this Potash Creditors’ Trust Agreement (the “**Creditors’ Trust Agreement**”).

RECITALS

WHEREAS, the trust established under this Creditors’ Trust Agreement (the “**Creditors’ Trust**”) is created on behalf, and for the sole benefit, of the Beneficiaries (as defined below);

WHEREAS, as a result of Settlor’s determination that it has insufficient financial resources to continue in operation, Settlor has determined to cease operations effective as of the end of the 2019-2020 academic year;

WHEREAS, in connection with the cessation of Settlor’s operations Settlor has entered into with Emerson College (“**Emerson**”) a certain Agreement for Asset Exchange In Support of Marlboro Institute, dated as of the date hereof (the “**Asset Exchange Agreement**”) in order, in part, to celebrate and continue Settlor’s educational legacy, provide for the continued education of Settlor’s students, provide for the employment of Settlor’s faculty, and provide for the orderly transfer to Emerson of Settlor’s assets, net of Settlor’s satisfying its obligations to creditors of Settlor;

WHEREAS, in an effort to provide for distribution of funds to its creditors, Settlor intends to transfer to this Creditors’ Trust certain assets (the “**Creditors’ Trust Assets**”) to be used exclusively for the benefit of those creditors of Settlor listed on Schedule A hereto as may be amended from time to time (each such listed creditor a “**Beneficiary**” and collectively the “**Beneficiaries**”).

WHEREAS, each of the Beneficiaries holds a claim against Settlor for goods or services delivered to Settlor;

WHEREAS, _____ of _____, an individual, has been selected by Settlor to act as the creditors’ trustee (the “**Creditors’ Trustee**”) to administer this Creditors’ Trust for the benefit of the Beneficiaries;

WHEREAS, the Creditors’ Trust is organized for the primary purposes of (i) taking title to and/or succeeding to the Creditors’ Trust Assets; (ii) granting authority to the Creditors’ Trustee to take such action as he deems warranted and advisable to liquidate, realize upon and otherwise reduce to cash the Creditors’ Trust Assets; and (iii) obligating the Creditors’ Trustee to distribute the proceeds of the Creditors’ Trust Assets to the Beneficiaries; and

WHEREAS, the Creditors' Trustee's activities, powers and duties under this Creditors' Trust Agreement are those determined to be reasonably necessary to, and consistent with, accomplishment of these purposes.

NOW, THEREFORE, in consideration of the promises and the covenants contained herein, the terms of the Creditors' Trust are as follows:

ARTICLE I DECLARATION OF CREDITORS' TRUST

1.1 Creation of Creditors' Trust. The signatories hereto, for and on behalf of the Settlor, hereby create the Creditors' Trust, which shall bear the name "**Potash Creditors' Trust**". In connection with the exercise of the Creditors' Trustee's powers hereunder, the Creditors' Trustee may use this name or such variation thereon as the Creditors' Trustee sees fit. The Settlor has granted, assigned, transferred, issued and/or delivered, for the benefit of the Beneficiaries, the Creditors' Trust Assets to the Creditors' Trustee, free and clear of all liens, claims, encumbrances and interests, to be held in trust for the benefit of the Beneficiaries to be applied as required by the Creditors' Trust.

1.2 Purpose of Creditors' Trust. The Creditors' Trust is established under the laws of the State of Vermont for the primary purposes of (a) collecting, holding and preserving the value of the Creditors' Trust Assets for distributions, and (b) distributing the Creditors' Trusts Assets as required under this Creditors' Trust Agreement. In furtherance of such purposes and the obligations of the Creditors' Trust, the Creditors' Trustee shall be responsible for (i) administering, preserving and or liquidating the Creditors' Trust Assets; (ii) distributing the Creditors' Trust Assets to the Beneficiaries, subject to appropriate withholdings for taxes on wages and other payroll related obligations,, from time to time in accordance with the terms of this Creditors' Trust Agreement; (iii) preparing and filing tax returns; and (iv) responding to inquiries of Beneficiaries. The activities of the Creditors' Trust shall be limited to those activities set forth herein and those reasonably related or ancillary thereto. The Creditors' Trustee shall not at any time, on behalf of the Creditors' Trust or any Beneficiaries, enter into or engage in any trade or business, and the Creditors' Trustee shall not use or dispose of any part of the Creditors' Trust Assets in furtherance of any trade or business.

1.3 Appointment and Acceptance of Creditors' Trustee. The undersigned Creditors' Trustee is hereby named, constituted and appointed as the Creditors' Trustee, to act and serve as Creditors' Trustee of the Potash Creditors' Trust upon and subject to the terms and conditions set forth herein. The Creditors' Trustee is willing, and does hereby accept the appointment, to act and serve as a Creditors' Trustee of the Potash Creditors' Trust, and to hold and administer the Creditors' Trust Assets pursuant to the terms and conditions of this Creditors' Trust Agreement.

1.4 No Reversion to the Settlor. Except as expressly provided under this Creditors' Trust Agreement, in no event shall any part of the Creditors' Trust Assets revert to or be distributed to the Settlor.

ARTICLE II ADMINISTRATION OF THE CREDITORS' TRUST

2.1 Rights, Powers and Privileges. The Creditors' Trustee shall have only the rights, powers and privileges expressly provided to the Creditors' Trust in this Creditors' Trust Agreement. The Creditors' Trustee may control and exercise authority over the Creditors' Trust Assets, over the acquisition, management and disposition thereof and over the management and conduct of the affairs of the Creditors' Trust to the same extent as if the Creditors' Trustee were the sole owner of the Creditors' Trust Assets in his own right. No individual or entity dealing with the Creditors' Trust shall be obligated to inquire into the Creditors' Trustee's authority in connection with the acquisition, management or disposition of Creditors' Trust Assets. The Creditors' Trustee shall have the power to take the actions granted in the subsections below and any powers reasonably incidental thereto, which the Creditors' Trustee, in his reasonable discretion, deems necessary, appropriate or advisable to fulfill the purposes of the Creditors' Trust and to comply with the obligations of the Creditors' Trust, unless otherwise specifically limited or restricted by this Creditors' Trust Agreement:

2.1.1 Accept and hold legal title to any and all rights of the Settlor and the Beneficiaries in or arising from the Creditors' Trust Assets;

2.1.2 Maintain on the Creditors' Trust's books and records (or on the books and records of any agent appointed by the Creditors' Trustee to maintain a record of the Beneficiaries and their beneficial interests in the Creditors' Trust) a register evidencing the beneficial interest in the Creditors' Trust held by each Beneficiary;

2.1.3 Amend the schedule of Beneficiaries attached hereto as Schedule A at such times as the Trustee determines is reasonable or necessary to reflect accurately the individuals or entities that constitute creditors of the Settlor and/or amounts due and owing to such individuals or entities;

2.1.4 Protect and enforce the rights to the Creditors' Trust Assets vested in the Creditors' Trustee by this Creditors' Trust Agreement by any method deemed appropriate including, without limitation, by judicial proceedings or otherwise;

2.1.5 Make all distributions provided for in, or contemplated by, this Creditors' Trust Agreement;

2.1.6 Open and maintain bank and other financial accounts on behalf, or in the name, of the Creditors' Trust;

2.1.7 Make all required tax withholdings, file all tax information returns, make tax elections by and on behalf of the Creditors' Trust and prepare, or cause to be prepared, and file all required local, state and federal tax returns for the Creditors' Trust;

2.1.8 Establish such reserves for taxes, assessments and other expenses of administration of the Creditors' Trust as may be necessary and appropriate for the proper operation of matters incident to the Creditors' Trust;

2.1.9 Pay all expenses and make all other payments relating to the Creditors' Trust Assets and the operation of the Creditors' Trust;

2.1.10 Retain and pay third parties pursuant to this Creditors' Trust Agreement;

2.1.11 Invest any Creditors' Trust Assets consisting of Cash in investments having maturities consistent with the Creditors' Trust's obligations to make distributions to Beneficiaries as and when required by this Creditors' Trust Agreement;

2.1.12 Convert to Cash any non-cash Creditors' Trust Assets;

2.1.13 Take any and all actions necessary to cause the Creditors' Trust to be or remain in compliance with applicable federal, state and/or local laws, rules and regulations;

2.1.14 Engage in all acts that would constitute ordinary course of business in performing the obligations of a Creditors' Trustee under a creditors' trust of this type;

2.1.15 Establish and maintain the funds, reserves and accounts (other than investment accounts) within the Creditors' Trust as deemed by the Creditors' Trustee, in his discretion, to be useful in carrying out the purposes of the Creditors' Trust;

2.1.16 Sue and be sued and participate, as a party or otherwise, in any judicial, administrative, arbitration or other proceeding;

2.1.17 Settle any claim, cause of action, objection, set off, recoupment or counterclaim;

2.1.18 Purchase insurance indemnifying the Creditors' Trustee and to indemnify (and purchase insurance indemnifying) the employees, agents and representatives of the Creditors' Trust or the Creditors' Trustee (including, without limitation, the agents and professionals retained by the Creditors' Trustee in accordance with this Creditors' Trust Agreement), to the fullest extent that a corporation organized under the laws of the Creditors' Trust's domicile is from

time to time entitled to indemnify its directors, officers, employees, agents and representatives;

2.1.19 Enter into agreements binding upon the Creditors' Trustee and on the Creditors' Trust and execute, acknowledge and deliver any and all instruments that are necessary, required or deemed advisable by the Creditors' Trustee, in each case, in connection with the performance of his duties under this Creditors' Trust Agreement; and

2.1.20 Take such other action as may be necessary, reasonable or appropriate to liquidate all Trust Assets and to distribute the proceeds thereof to the Beneficiaries net of any employment, withholding or other tax obligations.

Notwithstanding the foregoing, except for the reimbursement of expenses and the compensation to be paid to the Creditors' Trustee out of the Creditors' Trust Assets in accordance with this Creditors' Trust Agreement, the Creditors' Trustee shall not, directly or indirectly, sell or otherwise transfer all or any part of the Creditors' Trust Assets to the Creditors' Trustee or any person affiliated with the Creditors' Trustee.

2.2 Agents and Professionals. The Creditors' Trustee may consult with and retain counsel, accountants or other professionals as the Creditors' Trustee deems appropriate to assist the Creditors' Trustee in the performance of the tasks and obligations of the Creditors' Trust under the Creditors' Trust. Any professional employed by the Creditors' Trust in accordance with this Section shall have and maintain appropriate malpractice insurance. The Creditors' Trustee shall pay the reasonable fees and expenses of such persons out of the Creditors' Trust Assets. Neither the Creditors' Trust nor the Creditors' Trustee shall be liable for any loss to assets or property held by the Creditors' Trust by reason of any mistake or default of any such counsel, accountants or other professionals, so long as they are selected and retained by the Creditors' Trustee in good faith and without gross negligence.

2.3 Investment and Safekeeping of Creditors' Trust Assets. All moneys and other assets received by the Creditors' Trustee shall, until distributed or paid over as provided in this Creditors' Trust Agreement, be held in the Creditors' Trust for the benefit of the Beneficiaries. The Creditors' Trustee shall have no liability for interest or producing income on any moneys received by the Creditors' Trust herein and held for distribution or payment to the Beneficiaries, except as such interest shall actually be received by the Creditors' Trustee. Investments of any moneys held by the Creditors' Trustee shall be administered in the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs; provided, however, that the right and power of the Creditors' Trustee to invest any Creditors' Trust Assets consisting of cash shall be limited to investments having maturities consistent with the Creditors' Trustee's obligations to make distributions to Beneficiaries as and when required by the terms of this Creditors' Trust Agreement.

ARTICLE III DISTRIBUTIONS FROM THE CREDITORS' TRUST

3.1 Distributions in General. Distributions of Creditors' Trust Assets to the Beneficiaries shall be made by the Creditors' Trustee in amounts not to exceed those amounts set forth on Schedule A hereto within thirty (30) days following the latest of (i) the receipt by the Creditors' Trust of the Creditors' Trust Assets, (ii) agreement by a Beneficiary and the Creditors' Trustee as to the amount of a Beneficiary's claim, and (iii) the Creditors' Trustee's determination that a Beneficiary holds a liquidated, undisputed and non-contingent claim. Prior to making any distribution to any Beneficiary specifically referenced as an Employee Severance Beneficiary on Schedule A hereto other than for payments mandated by state or Federal statute or regulation, which mandatory payments include but are not limited to, payments for accrued and unpaid wages, paid time off and payment in lieu of statutorily mandated notice under the Worker Adjustment and Retraining Notification Act, the Creditor's Trustee shall receive an executed release from each Employee Severance Beneficiary. To the extent a release is not provided to the Creditors' Trustee from an Employee Severance Beneficiary, then the Creditors' Trustee shall retain the applicable severance disbursement for a period of three years or, if earlier, until the applicable release is received. If at the conclusion of three years from the creation of the Creditors' Trust the Creditors' Trustee does not obtain the release(s), any withheld disbursement(s) from the Employee Severance Beneficiaries shall be disbursed pursuant to the provisions of Section 3.6 hereof.

3.2 Calculation of Distributions. Distributions to Beneficiaries shall be based on the amount allocated to each Beneficiary on Schedule A hereto, and shall be net of payment by the Creditors' Trustee from the Creditors' Trust Assets of (i) all obligations to creditors holding a secured interest in the Creditors' Trust Assets; (ii) all outstanding fees and expenses of the Creditors' Trustee and any professionals employed by the Creditors' Trust then outstanding, (iii) all obligations to creditors of the Settlor first arising and accrued as a result of goods or services provided to Settlor from and after _____, 2020, including, but not limited to, obligations to the Settlor's [chief restructuring officers], financial advisor and legal advisors; (iv) any creditors of Settlor that would be entitled to priority in a case under Title 11 of the United States Code under Sections 507(a)(1) through 507(a)(10) inclusive; and (v) a reserve for projected expenses of completing administration of and terminating the Creditors' Trust. To the extent there are insufficient funds in the Creditors' Trust to satisfy all amounts listed on Schedule A in full, the Distributions shall be made *pro rata* to each Beneficiary calculated based on the amounts set forth on Schedule A.

3.3 Payments Limited to Creditors' Trust Assets. All payments to be made by the Creditors' Trustee to or for the benefit of any Beneficiary shall be made only from the Creditors' Trust Assets. Each Beneficiary shall have recourse only to the Creditors' Trust Assets for distributions under the Creditors' Trust.

3.4 Method and Form of Distributions. All distributions made by the Creditors' Trustee to the Beneficiaries shall be by check mailed by first class mail, postage prepaid or by wire transfer, as determined by the Creditors' Trustee, or by such other commercially reasonable means as may be otherwise agreed by a Beneficiary and the Creditors' Trustee. Mailed checks shall be sent as follows: (i) to the address set forth on Schedule A, or (ii) to the address set forth

in any written notice of address change delivered to the Creditors' Trustee after the date hereof. If any Beneficiary's distribution is returned as undeliverable, the Creditors' Trustee will take reasonable steps to attempt to deliver the distribution to the Beneficiary.

3.5 Priorities of Distribution. The Creditors' Trustee must pay the compensation of the Creditors' Trustee and other operating expenses of the Creditors' Trust out of the Creditors' Trust Assets and otherwise follow the priorities set forth in Section 3.2 herein before approving or making distributions to or for the Beneficiaries.

3.6 Residual Distribution. In the event that, after the obligations of the Creditor's Trustee hereunder have concluded and all payment obligations hereunder, including distributions to Beneficiaries and payment of fees and expenses associated with the administration of this Creditors' Trust, including those of the Creditors' Trustee and any legal or financial professional engaged by the Creditors' Trustee, have been satisfied, the Creditors' Trustee shall distribute any remaining funds to Emerson, which, due to its right to receive distribution of any residual, shall be deemed to be a Beneficiary.

ARTICLE IV BENEFICIARIES

4.1 Interest Beneficial Only. The ownership of a beneficial interest in the Creditors' Trust shall not entitle any Beneficiary or the Settlor to any title in or to the Creditors' Trust Assets or to any right to call for a partition or division of such assets or to require an accounting.

4.2 Ownership of Beneficial Interests Hereunder. Each Beneficiary shall have a beneficial interest in the Creditors' Trust solely to the extent that such Beneficiary is entitled to a distribution from the Creditors' Trust. Each Beneficiary shall cease to own a beneficial interest in the Creditors' Trust and cease to be a Beneficiary hereunder for all purposes immediately upon completion of the distribution by the Creditors' Trust to such Beneficiary as required by this Creditors' Trust Agreement.

4.3 Standing of Beneficiary. No Beneficiary shall have standing to direct the Creditors' Trustee to do or not to do any act other than as described herein.

ARTICLE V THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

5.1 Parties Dealing With the Creditors' Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Creditors' Trust or the Creditors' Trustee shall be entitled to rely on the authority of the Creditors' Trustee or any of the Creditors' Trustee's agents to act in connection with the Creditors' Trust Assets. There is no obligation on any person dealing with the Creditors' Trustee to inquire into the validity or expediency or propriety of any transaction by the Creditors' Trustee or any agent of the Creditors' Trustee.

5.2 Reliance on Documents. Except as otherwise provided herein, the Creditors' Trustee and the Creditors' Trust shall rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent or other document reasonably believed by the Creditors' Trustee to be genuine and to have been signed by the proper party or parties.

5.3 Limitation of Creditors' Trustee's Liability; Standard of Care. Anything herein to the contrary notwithstanding, in exercising the rights granted herein, the Creditors' Trustee shall exercise his best judgment, to the end that the affairs of the Creditors' Trust shall be properly managed and the interests of all the Beneficiaries are safeguarded. Persons or entities dealing with the Creditors' Trust or the Creditors' Trustee, or seeking to assert Claims against the Creditors' Trust or the Creditors' Trustee, shall look only to the Creditors' Trust Assets to satisfy any liability to such person, and the Creditors' Trustee shall have no corporate, personal or individual obligation to satisfy any such liability. The Creditors' Trustee shall not be liable (i) for any loss or damages by reason of any action taken or omitted by him, except in the case of willful fraud, willful misconduct, bad faith, or gross negligence, or (ii) for any act or omission made in reliance upon advice given to the Creditors' Trustee by his professionals.

5.4 Indemnification. The Creditors' Trustee shall be indemnified and receive reimbursement from and against all loss, liability, expense (including counsel fees and expenses) or damage which the Creditors' Trustee may incur or sustain arising out of, or resulting from, any act taken or omitted to be taken by the Creditors' Trustee in connection with the exercise and performance of his powers or duties under the Creditors' Trust, to the fullest extent permitted by applicable law, except if such loss, liability, expense or damage is finally determined by a court of competent jurisdiction to result from the Creditors' Trustee's willful fraud, willful misconduct, bad faith or gross negligence. The amounts necessary for such indemnification and reimbursement shall be paid by the Creditors' Trustee out of the Creditors' Trust Assets prior to and with a higher priority than, distribution to the Beneficiaries. This indemnification shall survive the death, dissolution, resignation or removal, as may be applicable, of the Creditors' Trustee, or the termination of the Creditors' Trust, and shall inure to the benefit of the Creditors' Trustee's heirs and assigns.

5.5 Exculpation. The Creditors' Trustee, the Creditors' Trust, and any of the Creditors' Trustee's employees, attorneys, accountants, consultants or agents, shall (a) not have or incur any liability to any person or entity for any act or omission in connection with, or arising out of, the administration of the Creditors' Trust or the property to be distributed, except if such act or omission is determined by a final order of a court of competent jurisdiction to reflect bad faith or to constitute willful misconduct or gross negligence, (b) be entitled to rely upon the advice of counsel with respect to his duties and responsibilities under the Creditors' Trust, and (c) be entitled to act or refrain from acting, in accordance with such advice; provided, however, nothing contained herein shall relieve the Creditors' Trust or the Creditors' Trustee from the duties and responsibilities to make the payments required by the terms of the Creditors' Trust. No amendment, modification or repeal of this Section shall adversely affect any right or protection of the Creditors' Trustee, the Creditors' Trust, and his or her employees, attorneys, accountants, consultants or agents that exists at the time of such amendment, modification or repeal.

ARTICLE VI
SELECTION, REMOVAL AND COMPENSATION OF CREDITORS' TRUSTEE;
ACCESS TO INFORMATION

6.1 Creditors' Trustee. The Creditors' Trustee may not be a Beneficiary of the Creditors' Trust.

6.2 Term of Service. The Creditors' Trustee shall serve until (a) the completion of all the Creditors' Trustee's duties, responsibilities and obligations under the Creditors' Trust; (b) termination of the Creditors' Trust in accordance with this Creditors' Trust Agreement; or (c) the Creditors' Trustee's death, resignation or removal.

6.3 Removal of the Creditors' Trustee. Any person serving as a Creditors' Trustee may be removed involuntarily only for cause by an order of a court of competent jurisdiction.

6.4 Resignation of the Creditors' Trustee. The Creditors' Trustee may resign at any time by giving the Settlor's counsel at least thirty (30) days written notice of his intention to do so. The resignation shall be effective on the later of (a) the date specified in the notice; or (b) the date that is thirty (30) days after the date the notice is delivered.

6.5 Appointment of Successor Creditors' Trustee. Upon the resignation, death, incapacity, or removal of the Creditors' Trustee, a successor Creditors' Trustee shall be appointed to fill the vacancy so created as soon as practicable following receipt of notice of the resignation, death, incapacity, or removal of the Creditors' Trustee by the Settlor, *provided however*, if the Settlor fails to appoint a successor within a reasonable time, then a successor shall be appointed by the Creditors' Trustee as a condition to the effectiveness of his resignation or, if the Creditors' Trustee is unable to make such appointment due to death or incapacity, by a partner of the firm of _____. Any successor so appointed shall consent to and accept in writing the terms of this Creditors' Trust Agreement and shall agree that the provisions of this Creditors' Trust Agreement shall be binding upon and inure to the benefit of such successor Creditors' Trustee and all of his heirs and legal and personal representatives, successors or assigns.

6.6 Powers and Duties of Successor Creditors' Trustee. A successor Creditors' Trustee shall have all the rights, powers, duties, privileges and discretion of, and shall otherwise be in the same position as, his predecessor under the Creditors' Trust.

6.7 Creditors' Trust Continuance. The death, resignation or removal of any Creditors' Trustee shall not terminate the Creditors' Trust or revoke any existing agency created pursuant to this Creditors' Trust Agreement or invalidate any action theretofore taken by the Creditors' Trustee.

6.8 Compensation and Costs of Administration. The Creditors' Trustee, and any professional employed by the Creditors' Trustee, shall be entitled to receive payment of fees and reimbursement of expenses at their normal and customary rates from the funds held by the Creditors' Trust prior to, and with higher priority than, the rights to distribution to the Beneficiaries.

6.9 Additional Reports and Filing. The Creditors' Trustee shall timely (a) prepare, file and distribute such additional statements, reports and submissions as may be necessary to cause the Creditors' Trust and the Creditors' Trustee to be in compliance with applicable law.

ARTICLE VII MAINTENANCE OF RECORDS

7.1 Maintenance of Records. The Creditors' Trustee shall maintain books and records containing a description of all property from time to time constituting the Creditors' Trust Assets and an accounting of all receipts and disbursements. The Creditors' Trustee shall furnish to any Beneficiary upon written request an annual statement of receipts and disbursements of the Creditors' Trust. Upon termination of the Creditors' Trust, the Creditors' Trustee may, subject to any applicable law relating to the retention of books and records, destroy any books and records that the Creditors' Trustee determines are no longer necessary for administration of the Creditors' Trust.

ARTICLE VIII DURATION OF CREDITORS' TRUST

8.1 Duration. The Creditors' Trust shall become effective upon execution of the Creditors' Trust Agreement by Settlor and shall remain and continue in full force and effect until the Creditors' Trust is terminated in accordance with this Creditors' Trust Agreement.

8.2 Termination Upon Distribution of All Creditors' Trust Assets. Upon distribution and liquidation of all Creditors' Trust Assets and payment of all fees, expenses and taxes of the Creditors' Trust, except as expressly provided herein, the Creditors' Trust and the responsibilities of the Creditors' Trustee under the Creditors' Trust and this Creditors' Trust Agreement shall terminate. Upon termination of the Creditors' Trust in accordance with this Creditors' Trust Agreement, except as expressly provided herein, the Creditors' Trustee shall be forever discharged of, and released from, all powers, duties and responsibilities under the Creditors' Trust and this Creditors' Trust Agreement.

8.3 Termination After Five Years. If the Creditors' Trust shall not have been previously terminated pursuant to Section 8.2 hereof, on the fifth (5th) anniversary of the date of execution of this Creditors' Trust Agreement (the "**Expiration Date**"), the Creditors' Trustee shall distribute all of the remaining Creditors' Trust Assets to the Beneficiaries to the extent necessary to pay in full the amounts set forth on Schedule A and shall disburse any balance in accordance with the Residual Distribution provisions of Section 3.6 hereof, as applicable, and immediately thereafter, the Creditors' Trust shall terminate and the Creditors' Trustee shall have no further responsibility in connection with the Creditors' Trust.

ARTICLE IX MISCELLANEOUS

9.1 Notices. All notices to be given to Beneficiaries may be given by ordinary mail, or may be delivered personally, to the holders of beneficial interests in the Creditors' Trust at the addresses appearing on Schedule A or such other address as any Beneficiary may provide. Any notice or other communication which may be or is required to be given, served, or sent to the Creditors' Trustee shall be in writing and shall be sent overnight delivery service, certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or email (if receipt is confirmed) addressed as follows:

With a copy to:

or to such other address as may from time to time be provided in written notice by the Creditors' Trustee.

9.2 Governing Law. This Creditors' Trust Agreement and the Creditors' Trust shall be governed by and construed in accordance with the laws of the State of Vermont, without reference or giving effect to its conflicts of laws principles.

9.3 Successors and Assigns. This Creditors' Trust Agreement shall inure to the benefit of and shall be binding upon the Creditors' Trustee and any successors and assigns.

9.4 Particular Words. Reference in this Creditors' Trust Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Creditors' Trust Agreement. The words "hereof," "herein," "herein," and similar terms shall refer to this Creditors' Trust Agreement and not to any particular Section or Article of this Creditors' Trust Agreement.

9.5 Headings. The various headings of this Creditors' Trust Agreement are inserted for convenience only and shall not affect the meaning or understanding of this Creditors' Trust Agreement or any provision hereof.

9.6 Amendment. This Creditors' Trust Agreement may not be amended except in and to the extent such amendment is approved by the Creditors' Trustee, [the Settlor], and Emerson.

9.7 Severability. If any term, provision covenant or restriction contained in this Creditors' Trust Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Creditors' Trust Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

IN WITNESS WHEREOF, the Settlor and the Creditors' Trustee have executed this Creditors' Trust Agreement as of the day and year written above.

_____, as Creditors' Trustee

The Corporation of Marlboro College

By: _____
Name: _____
Title: _____

Schedule A
Schedule of Beneficiaries

Beneficiary	Address	Claim Amount

APPENDIX F**ARCHIVAL MATERIALS**

(The following listed materials are Excluded Assets and will not be transferred to Emerson, although any proceeds received by Marlboro for such materials will be part of the Marlboro Funds to be transferred to Emerson.)

Materials	Description	Notes
Marlboro College Archive Materials	Materials deemed essential to preserve the history and legacy of Marlboro College	See 'Archive Materials' attached
Galbraith Collection	Books and memorabilia gifted by the Galbraith family - to be returned	Items not formally catalogued

<u>Archive Materials</u>	
<u>Collection</u>	<u>Description</u>
Marlboro College Archives	The Marlboro College Archives collection spans roughly 275 linear feet and contains a variety of formats/object types. The majority of the collection consists of printed materials on paper, including MC catalogs and handbooks, The Citizen newspaper, yearbooks, scrapbooks, the Potash Hill magazine (the semi-annual College publication), and historical MC ephemera. Additionally, as part of the early MC history, the collection contains documents concerning Walter Hendricks and Robert Frost. The collection also includes cassette tapes and VHS tapes recording campus events, capturing on-campus concerts featuring notable musicians, such as Blanche Moyse and Luis Batlle, and speakers, like Loren Pope and Saul Bellow, as well as oral histories of alumni from MC's first few graduating classes. The collection also includes photographs of campus life and a small collection of three-dimensional objects. The earliest materials in the collection date back to the mid-1940's and continue to the present time. There may be materials in the collection to which MC does not own copyright or any other right except the right of possession.
Plans of Concentration	Measuring 206 linear feet, the Plans of Concentration document individual student work spanning from the early 1950's to present day. All Plans are bound and professionally cataloged in MARC records with digital preservation copies. MC has only the right of possession on these Plans.
Faculty and Alumni Collection	Measuring 17 linear feet, the Rice-Aron Library has collected publications from Marlboro's faculty & alumni. MC has only the right of possession of these publications.
Artist Book Collection	4 linear feet; closed stacks. Cataloged with MARC records. Small format Artists Books on wide ranging topics. MC has only the right of possession on these Artists Books.
Zine Collection	8 linear feet; open stacks. While this collection has some foundational organization, it is largely a browsing collection. Contains a mixture of commercially distributed zines and zines created by Marlboro community members. MC has only the right of possession on these zines.
Kipling Collection	Spanning 60 linear feet; closed stacks. Professionally processed with grant funding. Concentrating on Rudyard Kipling's 5 years in Vermont, this collection consists of three distinct item types: books & journal articles, photographs, and primary source documents. The books and journal articles collection includes many rare and first editions and journal articles in their original volumes. Most materials are from the Howard C. Rice, Jr. Collection. Many of the first editions have been appraised, but a number of years ago. The photograph collection primarily focuses on Kipling's Vermont years (1892-1896) and includes a broad spectrum of images of Kipling, his family, friends, relatives and Naulakha. Most images are from the F. Cabot Holbrook Collection, owned by The Landmark Trust USA. Please see separate transfer permission document from The Landmark Trust USA, upon which the transfer of possession of these particular items is contingent. The primary source documents collection includes materials related to Rudyard Kipling that were stored in a Brattleboro, VT bank vault for nearly 100 years. This box apparently had been left behind when the Kiplings left Vermont in 1896. For all of the foregoing items described above, these items have been in MC's possession. Unless a prior agreement specifically grants ownership to MC, MC claims no ownership interest in items in the Kipling Collection, and is transferring the right of possession.

MARLBORO COLLEGE DISCLOSURE SCHEDULES

- 1. SCHEDULE 15iii – AUTHORITY; NO CONFLICT; CONSENTS**
- 2. SCHEDULE 15iv – INDEBTEDNESS**
- 3. SCHEDULE 15v(a) – CONTRACTS**
- 4. SCHEDULE 15vi – TITLE TO TRANSFERRED ASSETS**
- 5. SCHEDULE 15vii – CONDITION AND SUFFICIENCY OF ASSETS**
- 6. SCHEDULE 15viii – REAL PROPERTY**
- 7. SCHEDULE 15ix – INTELLECTUAL PROPERTY**
- 8. SCHEDULE 15x – TANGIBLE PERSONAL PROPERTY**
- 9. SCHEDULE 15xi – INSURANCE**
- 10. SCHEDULE 15xii – LEGAL PROCEEDINGS; GOVERNMENT ORDERS**
- 11. SCHEDULE 15xiii – COMPLIANCE WITH LAWS; PERMITS**
- 12. SCHEDULE 15xiv – ENVIRONMENTAL MATTERS**
- 13. SCHEDULE 15xv – EMPLOYEE BENEFIT MATTERS**
- 14. SCHEDULE 15xvi – EMPLOYMENT MATTERS**
- 15. SCHEDULE 15xvii – ENDOWMENT AND INVESTMENTS**
- 16. SCHEDULE 15xviii – TAXES**
- 17. SCHEDULE 15xx – UNDISCLOSED LIABILITIES**
- 18. SCHEDULE 15xxi – ABSENCE OF CERTAIN CHANGES**
- 19. SCHEDULE 17E – EMPLOYEE AND EMPLOYEE BENEFITS**

SCHEDULE 15iii

AUTHORITY; NO CONFLICT; CONSENTS

Notice to State of Vermont Attorney General

Notice to United States Department of Education

Notice to the New England Commission of Higher Education

Notice to State of Vermont Department of Education

Notice to the Vermont Commissioner of Taxes

Notice in connection with the Westing Gift Annuity

Notice and Amendment of the Marlboro College Pooled Investment Trust

Marlboro's investment and endowment funds are managed by several asset managers. Emerson plans to seek new agreements with each of those asset managers.

SCHEDULE 15iv

INDEBTEDNESS

As of June 24, 2020, the balances of all outstanding long-term and short-term debt obligations are as follows:

USDA Loan: Current principal balance is \$2,165,324 plus interest \$3,426

Kubota Tractor Lease: \$49,873, see lease previously provided to Emerson. The lease is to be assigned to, and assumed by, Democracy Builders Fund, Inc. and is to be included as an Excluded Lease.

Postage Meter lease: \$14,098

Peoples United Bank: \$1,000,000 plus interest \$1,973 (PPP Loan)

SCHEDULE 15v

CONTRACTS

See list of contracts previously provided to Emerson.

SCHEDULE 15vi
TITLE TO TRANSFERRED ASSETS

See attached list of restrictions on Marlboro Funds.

Marlboro College Endowment Endowment Schedule As of April 30, 2020		As of April 30, 2020			Total Balance	Year Established	Purpose	Major Donor(s)
Fund Name	Perm Restricted Balance	Temp Restricted Balance	Unrestricted Balance					
60th Anniv Fund for Inspired Teaching	\$ 6,000,000	\$ 351,144	\$ -	\$ 6,351,144	2006	Fund to support faculty salary and retirement benefits		
Arthur D Butler Fund	\$ 22,505	\$ 7,379	\$ -	\$ 29,884	2008	This fund was established in 2008 in honor of Arthur D Butler, professor of economics, provost of SUNY/Buffalo, and president of Housing Opportunities Made Equal. Butler grants will provide support to juniors and seniors whose Plan of Concentration includes the study of poverty and social policy, preferably in the U.S. or abroad. Grant funds are to be used for research and expenses related to the recipient's Plan, such as books, supplies, travel costs and similar expenses. Applications should be directed to the Office of the Dean of Faculty.		
Audrey Gorton Prize	\$ 5,300	\$ 3,372	\$ -	\$ 8,672	1989	The Audrey Alley Gorton Award, given in memory of Audrey Gorton, Marlboro alumna and member of the faculty for 33 years, to the student who best reflects the Gorton qualities of: passion for reading, an independence of critical judgement, fastidious attention to matters of style, and a gift for intelligent conversation.		
	\$ 50,100	\$ 29,037	\$ -	\$ 79,137	2006	The income from the fund will be used to offer an artist-in-residence program which will: Support the opportunity for a visiting artist to teach, interact with faculty and students and create new work; Expand learning opportunities for students; Stimulate the work of our own visual arts faculty; Create opportunities for collaborative expression between the visual arts and other curricular areas.		
Brenn Green s/s	\$ 254,839	\$ 48,744	\$ -	\$ 303,583	1985	Provide named scholarships to deserving, needy students of MC		
	\$ 10,876	\$ 3,852	\$ -	\$ 14,728	1998	Awarded to a student who demonstrates excellence in the natural sciences, who uses interdisciplinary approaches and who places his or her work in the context of larger questions.		
	\$ 365,649	\$ 5,826	\$ -	\$ 371,475	2007	Scholarships awarded to currently enrolled students who in the opinion of the faculty show academic excellence and are juniors or seniors whose Plans of Concentration are in the field of literature or writing, and who have demonstrated a gift for and appreciation of the usage of language.		
Culbertson	\$ 2,000	\$ (44)	\$ -	\$ 1,956				
Ellen McCulloch-Lovell Prize in Writing	\$ 59,645	\$ 5,204	\$ -	\$ 64,849	2015	The Ellen McCulloch-Lovell Prize was established in 2015 in honor of Ellen's eleven years as president of Marlboro College. The Prize recognizes accomplishment and potential in writing across genres - including fiction, poetry, non-fiction, and creative non-fiction - and encourages emerging writers to keep developing their craft. Each year, recipients will alternate between Marlboro College undergraduate and graduate students who have shown both potential and improvement in their writing. Prize recipients will be selected through an application process overseen by the Marlboro College Committee on Prizes and Scholarships.		
Endowment Student Life	\$ -	\$ -	\$ -	\$ -	2011	Income to be used for operating expenses associated with student life including orientation, retention and other programming.		
Galbraith scholarship award	\$ 4,950	\$ 7,102	\$ -	\$ 12,052	2004	Initiated by Class of 2004. Stipend goes to recipient of Scholarship for Plan or research materials.		
General Endowment	\$ 1,438,172	\$ 151,994	\$ -	\$ 1,590,106				

Marlboro College Endowment Endowment Schedule As of April 30, 2020		As of April 30, 2020		Total Balance	Year Established	Purpose	Major Donor(s)
Fund Name	Perm Restricted Balance	Temp Restricted Balance	Unrestricted Balance				
	\$ 130,500	\$ 90,092	\$ -	\$ 220,592	1992	Scholarships - older students returning to school and exhibits academic excellence - another to a student in Natural Sciences	
Geraldine Pittman de Baillie Endowed Chair in Literature	\$ 500,300	\$ 6,778	\$ -	\$ 507,078	2017	Endowed Faculty Chair in Literature	
Endowment fund	\$ 100,000	\$ 14,534	\$ -	\$ 114,534	1987	The [redacted] and Scholarship provides financial aid to middle-income students who intend to reside in the U.S. permanently after their studies. The scholarship will be awarded to juniors and seniors who appeal for additional financial assistance after unexpected or unusual circumstances or special circumstances after the FAFSA has been filed.	
Hendricks Fac Chair	\$ 232,189	\$ 131,120	\$ -	\$ 363,309	1992	Endowment of a chair in English literature, poetry, or creative writing in memory of Flora Bishop Hendricks and her husband, Walter Hendricks.	
Hilly VanLoon	\$ 6,684	\$ 1,944	\$ -	\$ 8,628	2000	Est'd by Class of 2000 in honor of Hilly van Loon, Marlboro Class of 1962 and staff member for 23 years; is given to the senior who best reflects Hilly's wisdom, compassion, community involvement, quiet dedication to the spirit of Marlboro College, joy in writing and celebration of life.	
Hiro Watanabe Scholarship	\$ 51,250	\$ 524	\$ -	\$ 51,774	2016	Scholarship awarded to junior or senior whose Plan of Concentration demonstrates a passion for the Visual Arts. In memory of Hiro Watanabe '82.	
J.K. Galbraith Scholarship	\$ 20,035	\$ 9,502	\$ -	\$ 29,536	2001	The John Kenneth Galbraith Scholarship is awarded annually to a student who shows the promise of excellence in the fields of literature, economics, or social policy. One awarded. Interest awarded annually.	
[redacted]	\$ 40,100	\$ 11,126	\$ -	\$ 51,226	1996	The annual income generated from the fund is awarded to the most deserving student of the junior class to be applied to his or her senior year's tuition.	
Jedediah Adam Leland Fels Award	\$ 16,826	\$ 1,523	\$ -	\$ 18,349	2015	The Jedediah Adam Leland Fels (JALF) Award, established in 2015 in memory of Jed (Adam) Fels, class of 1992, recognizes a second semester freshman or a sophomore who demonstrates a passion for the literary and/or dramatic arts and whose sense of humor and unique or even provocative community presence embodies the core values of the college.	
Jerry Aron Fund	\$ 203,025	\$ 73,961	\$ -	\$ 276,986	2007	The Jerome L. Aron Fund was established by Marlboro College in memory of longtime Marlboro friend and trustee Jerry Aron. The Aron Fund celebrates the close collaboration between Marlboro students and faculty by supporting research, fieldwork, and/or the acquisition of materials needed to complete a Plan of Concentration. Students and their faculty Plan sponsor will apply jointly for Aron Grants; recipients will be chosen annually by the Prizes and Scholarships Committee, and announced annually at Convocation in the fall.	
Prize	\$ 30,000	\$ 4,647	\$ -	\$ 34,647	2016	Awarded to a junior or senior who has demonstrated a strong commitment to social and economic justice through their Plan of Concentration and/or civic engagement on the Marlboro campus or at the local, state, national or international level. To be awarded with broad criterion for plan of concentration focus, study abroad, local volunteer work, etc. (from New Fund # request form as of 6/2/16).	

Marlboro College Endowment		As of April 30, 2020		Year Established	Purpose	Major Donor(s)
Endowment Schedule		Temp Restricted Balance	Unrestricted Balance			
Fund Name	Perm Restricted Balance	Temp Restricted Balance	Unrestricted Balance	Total Balance		
Josie Avery Scholarship Fund	\$ 7,295	\$ 5,797	\$ -	\$ 13,092	2003	Provides a (\$100) stipend to help a first-year student purchase books in support of their Marlboro education. Created in memory of Josie Avery '77.
Lillian Farber Chair in Tech & Liberal Arts	\$ -	\$ -	\$ -	\$ -	2000	Provides for a fully endowed faculty position to teach computer science within the context of liberal arts. The Farber chairholder will teach CS courses to science majors and non-majors, and work with colleagues from all curricular areas. Including the arts, humanities, natural and social sciences, to integrate technology into the liberal arts curriculum. Recognizing that fundamental notions of knowledge-making, storing, and sharing are being challenged by technology with deep implications for all fields of inquiry, the Farber Chair helps students and faculty use technology as a tool to solve problems that face humanities, that arise from all disciplines, and from life itself.
[REDACTED]	\$ 218,924	\$ 58,175	\$ -	\$ 277,099	1997	Created in honor of Lillian Farber, longtime trustee of MC. The [REDACTED] scholarships are given to juniors or seniors whose Plans of Concentration demonstrate a passion for social justice in their academic work. Est. [REDACTED]
[REDACTED]ecture	\$ 20,000	\$ 51,367	\$ -	\$ 71,367	1985	Established in 1980 to bring a scholar annually to campus to speak on the role of religion in humanistic terms throughout the ages.
[REDACTED] Memorial Prize	\$ 12,955	\$ 354	\$ -	\$ 13,309	2015	An amount not less than \$1,000 awarded to a sophomore or junior who, like [REDACTED], has overcome health challenges to remain enrolled as a student in good standing at Marlboro College.
Music Chair	\$ 1,219,175	\$ 130,805	\$ -	\$ 1,349,980	2002	Endowed Faculty Chair in honor of Luis Battle
[REDACTED] Music Room	\$ 31,791	\$ 17,928	\$ -	\$ 49,719	2007	To endow a music library for the College so that faculty and students could have materials such as CDs and DVDs as learning tools. Dorothy also gave Marlboro a prized collection of classical recordings.
Rebecca Willow Prize Fund	\$ 8,485	\$ 1,261	\$ -	\$ 9,746	2007	Awarded to a student whose presence brings personal integrity and kindness to the community and who unites an interest in human history and culture with a passion for the natural world.
Robert E Engel Prize	\$ 16,644	\$ 2,002	\$ -	\$ 18,646	2011	The Robert E. Engel Award, established in 2011 in honor of Bob Engel, Marlboro faculty member for 36 years, is awarded to a student who demonstrates Bob's passion for the natural world and his keen powers of observation and inquiry as a natural historian.

Marlboro College Endowment		As of April 30, 2020		Total Balance	Year Established	Purpose	Major Donor(s)
Fund Name	Perm Restricted Balance	Temp Restricted Balance	Unrestricted Balance				
[REDACTED] Fund for Study Abroad	\$ 300,000	\$ 69,365	\$ -	\$ 369,365	1993	To establish and maintain a program to encourage students to study abroad.	
Robert H. Persons	\$ 500	\$ (11)	\$ -	\$ 489			
Robert MacArthur Prize	\$ 9,460	\$ 11,724	\$ -	\$ 21,184	1993	The Robert H. MacArthur Prize was established in 1993 in memory of Robert MacArthur. Class of 1951, who founded the science program at Marlboro College. The contest for the prize is in the form of a question or challenge offered to the entire student community. Managed by John MacArthur of Marlboro, VT. in 2017: "Recently, the dedication was extended to include Robert's brother John, and their parents, John and Olive MacArthur, who founded the science program at Marlboro College."	
[REDACTED] Fund	\$ 62,841	\$ 16,149	\$ -	\$ 78,990	2007	To enhance student opportunity for WSP students; working internships	
Roland Boyden Humanities Chair	\$ 171,434	\$ 20,853	\$ -	\$ 192,287	1993	To offset or contribute to the annual salary of the chair holder, and to fund an annual student stipend. Student stipend: a portion of the fund's income (no more than \$1,500 annually) will be awarded each year to a deserving junior or senior for research purposes.	
[REDACTED] Memorial Prize	\$ 20,200	\$ 1,814	\$ -	\$ 22,014	2006	Awarded annually to a junior or senior who best reflects Ryan's qualities of philosophical curiosity, creativity, compassion and spiritual inquiry.	
[REDACTED]	\$ 7,454	\$ 6,708	\$ -	\$ 14,162	1980	The [REDACTED] scholarship is given annually to an upper-class student for academic achievement and community service.	
[REDACTED]	\$ 41,059	\$ 22,704	\$ -	\$ 63,763	1984	Scholarship fund for upperclass student for academic achievement and community service	
[REDACTED]	\$ 20,000	\$ 23,632	\$ -	\$ 43,632	1980	To bring to campus a knowledgeable and articulate speaker who espouses a view which is counter to the then prevailing mood and opinion	
[REDACTED] Fund	\$ 114,833	\$ 20,148	\$ -	\$ 134,981	1993	The [REDACTED] scholarships are awarded to two full-time students, one male and one female, who are Windham County residents.	
Unrestricted Endowment		\$ 15,129,199	\$ -	\$ 15,129,199	2003	General Operations of the College	
Visual Arts Fund	\$ 352,187	\$ (9,685)	\$ -	\$ 342,502	2002	Endowed Faculty Chair in Visual Arts	
Whittemore Library	\$ 2,000	\$ 30,866	\$ -	\$ 32,866		Endowed fund to support faculty research, including materials and travel, beyond research for course preparation, and with the aim of publication, and including publication subvention (permissions, color plates, and the like.)	
[REDACTED] Faculty Research Fund	\$ 100,300	\$ 18,743	\$ -	\$ 119,043	2015		
William Davison Prize	\$ 7,800	\$ 2,906	\$ -	\$ 10,706	2005	The William Davison Prize, created by the Town Meeting Selectboard and named in honor of Will Davison who served as a faculty member for 18 years and as a trustee for 22 years, is awarded to one or more students for extraordinary contributions to the Marlboro Community. Income to be awarded yearly to 1 or more students for extraordinary contributions to the Marlboro College community.	

Marlboro College Endowment		As of April 30, 2020		Total Balance	Year Established	Purpose	Major Donor(s)
Endowment Schedule	Fund Name	Perm Restricted Balance	Temp Restricted Balance				
	Windham s/s	\$ 116,061	\$ 44,707	\$ 157,768	2004	To provide scholarship aid to Marlboro College's Vermont students	
		\$ 50,025	\$ 22,712	\$ 72,737	1996	Scholarship for a junior or senior who demonstrates superior talents in the visual arts	
	Pooled Income Fund	\$ -	\$ -	\$ 457,968			
	Total	\$ 12,456,366	\$ 1,527,323	\$ 15,129,199			

SCHEDULE 15vii
CONDITION AND SUFFICIENCY OF ASSETS

None.

SCHEDULE 15viii

REAL PROPERTY

See title commitment from Commonwealth Title dated Feb 24, 2020 previously provided to Emerson.

The Purchase and Sale Agreement with Democracy Builders Fund, Inc., dated as of May 22, 2020.

Putney Student Travel has a lease to use the campus for two weeks each summer.

SCHEDULE 15ix
INTELLECTUAL PROPERTY

(a)

Intellectual Property Registrations and Intellectual Property Assets owned by the College.

Marlboro College; Registered as a trade name in Vermont 02/19/2002 listing as owner The Corporation of Marlboro

Marlboro College; Registered as a trade name in the USPTO on 09/30/2002, Registration Number 2829875, listing as owner The Corporation of Marlboro, along with a typed drawing

The Corporation of Marlboro as owner, has the following tradenames registered in Vermont:

Common Good Vermont (this tradename is an Excluded Asset) (Cessated)

Marlboro College (Active)

The Graduate Center of Marlboro College (Active)

The College owns common law copyrights in copyrightable materials created on behalf of the College by employees, such as marketing materials, website content, brochure content, etc.

The College takes the traditional approach in institutions of higher education that faculty members own copyrights in their scholarly materials and work.

(c) None.

(f) There is an application pending before the U.S. Patent and Trademark Office for the mark "SAVE MARLBORO COLLEGE!" by a person who is not affiliated with the College. It does not appear that this person will be able to establish trademark rights in the mark that is the subject of this application.

SCHEDULE 15x
TANGIBLE PERSONAL PROPERTY

15x(a) - See Emerson Acquisition Schedule E.

15x(b) –

- 1. See Schedule 15vi**
- 2. USDA Loan**
- 3. UCC lien in favor of People's United Bank**

SCHEDULE 15xi

INSURANCE

See Summary List of Insurance as of May 20, 2020, including loss runs for both MEMIC and The Cincinnati Insurance Companies, previously provided to Emerson. (Revised loss runs to be provided upon receipt)

SCHEDULE 15xii

LEGAL PROCEEDINGS; GOVERNMENT ORDERS

15xii(a) The College has no unresolved Claims.

15xii(b) None.

15xii(c) None

SCHEDULE 15xiii

COMPLIANCE WITH LAWS; PERMITS

Current Material Permits issued to Marlboro are attached hereto.

Marlboro College
List of Permits

Permit Type	Permit Number	Permit Date	Expiration Date
Indirect Discharge Permit	ID-9-0269-1	1/31/2019	9/30/2023
Individual Wetland Permit	NS79-0033	5/20/2019	5/20/2024
Land Use Permit	2W0245-21	7/18/2019	10/15/2022
Wastewater System and Potable Water Supply Permit	WW-2-0843-14	6/6/2019	
Construction General Permit	3-9020	6/21/2019	6/20/2021
Authorization to Discharge under General Permit	8310-9015	6/6/2019	6/5/2024
Individual Wetland Permit	2019-017	5/20/2019	
Construction Permit	C-3673-19.0	6/4/2019	6/30/2021
Water Supply Permit	20743		
Water Supply Permit	20875		

SCHEDULE 15xiv

ENVIRONMENTAL MATTERS

Reference is made to all matters contained in the Phase 1 Environmental Site Assessment prepared by ATC Group Services LLC dated May 19, 2020, a copy of which has been provided to Emerson.

SCHEDULE 15xv
EMPLOYEE BENEFIT MATTERS

15xv(a) – Attached hereto is a true and complete list of each Benefit Plan.

15xv(c) – None.

15xv(d) – None.

15xv(f) – None.

15xv(g) – There is a defined contribution plan that provides post-retirement benefits to certain retired faculty members. This plan will be terminated after the Closing.

15xv(h) – None.

Employee Benefit Plans	Plan	Administrator	Type	Description
Accidental Death & Dismemberment Insurance	Corporation of Marlboro College Welfare Benefit Plan	Unum Life Insurance Company of America	Welfare Benefit Plan	
Adoption Leave Policy	Adoption Leave Policy	Marlboro College	Adoption Leave	Paid Adoption Leave
Basic Life Insurance	Corporation of Marlboro College Welfare Benefit Plan	Unum Life Insurance Company of America	Welfare Benefit Plan	
Bereavement	Bereavement	Marlboro College	Bereavement Pay	Paid Bereavement
Emergency Volunteer Time	Emergency Volunteer Time	Marlboro College	Paid Emergency Volunteer Time	Paid 15 Volunteer hours per year
Employee Assistance Program	Employee Assistance Program	ESI Employee Assistance Group	Welfare Benefit Plan	Employee Assistance Program
Employee Assistance Program	Employee Assistance Program	Marlboro College	EAP	
Family Medical Leave Act	Family Medical Leave Act	Marlboro College	FMLA	FMLA
Group Dental Insurance	Corporation of Marlboro College Welfare Benefit Plan	Delta Dental of Vermont	Welfare Benefit Plan	Group Dental Insurance
Group Health and Vision Insurance	Corporation of Marlboro College Welfare Benefit Plan	Blue Cross and Blue Shield of Vermont	Welfare Benefit Plan	Health and Vision Insurance
Health Benefit Continuation	Health Benefit Continuation	Marlboro College	COBRA	COBRA
Holidays	Holidays	Marlboro College	Paid Holidays	
Jury and Witness Duty Leave	Jury and Witness Duty Leave	Marlboro College	Jury/Witness Duty Leave	Jury and Witness Duty Leave
Long Term Disability Insurance	Leave of Absence (beyond FMLA)	Marlboro College	Leave of Absence (beyond FMLA)	Leave of Absence (beyond FMLA)
Marlboro College Course Credit or Class Audit	Corporation of Marlboro College Welfare Benefit Plan	Unum Life Insurance Company of America	Welfare Benefit Plan	
Marlboro College Defined Contribution Retirement Plan	Marlboro College Course Credit or Class Audit	Marlboro College	Course Credit	Marlboro College Course Credit or Class Audit
Marlboro College Free Tuition Benefit for Family Members	Marlboro College Defined Contribution Retirement Plan	TIAA CREF	403(b) Plan	403(b) plan, includes employer match to eligible employees
Marlboro College Tax Deferred Annuity Plan	Marlboro College Free Tuition Benefit for Family Members	Marlboro College	Free Tuition	Marlboro College Free Tuition Benefit for Family Members
Maternity Leave Policy	Marlboro College Tax Deferred Annuity Plan	TIAA CREF	403(b) Plan	403(b) plan, provides for employee contributions only
Meals and Dining Half Duty	Maternity Leave Policy	Marlboro College	Maternity Leave	See College's short-term disability plan
Personal Time	Meals and Dining Half Duty	Marlboro College	Meal without charge	Free Meals
Professional Development Opportunities	Personal Time	Marlboro College	Paid Personal Time	Paid Personal Time
Retirement Healthcare Benefit Program (Emerit)	Professional Development Opportunities	Marlboro College	Professional Development	Professional Development Opportunities
Short-Term Disability	Retirement Healthcare Benefit Program (Emerit)	Marlboro College	Retirement Healthcare Program	Retirement Healthcare Benefit Program (Emerit)
Sick Time Eligibility	Short-Term Disability	Marlboro College	Short-Term Disability	Short-Term Disability
Summer Hours	Sick Time	Marlboro College	Short-Term Disability	Short-Term Disability
Tuition Exchange Program	Summer Hours	Marlboro College	Paid Sick Time	Paid Sick Time
Unpaid Leave/Unpaid Time Off	Term Life Insurance	Marlboro College	Summer Hours	Fridays summer hours for all full-time staff
Vacation	Tuition Exchange Program	Marlboro College	Tuition Exchange	Tuition Exchange Program
Vision Coverage	Unpaid Leave/Unpaid Time Off	Marlboro College	Unpaid Leave/Unpaid Time Off	Unpaid Leave/Unpaid Time Off
Voluntary Accident Insurance	Vacation	Marlboro College	Paid Vacation	Accrued Vacation
Voluntary Critical Illness Insurance	Vision Coverage	VSP	Vision Plan	
Voluntary Life Insurance	Corporation of Marlboro College Welfare Benefit Plan	Unum Life Insurance Company of America	Welfare Benefit Plan	
	Corporation of Marlboro College Welfare Benefit Plan	Unum Life Insurance Company of America	Welfare Benefit Plan	
	Corporation of Marlboro College Welfare Benefit Plan	Unum Life Insurance Company of America	Welfare Benefit Plan	
	Corporation of Marlboro College Welfare Benefit Plan	Unum Life Insurance Company of America	Welfare Benefit Plan	

SCHEDULE 15xvi
EMPLOYMENT MATTERS

15xvi(a) – The College has agreed to make certain payments for the buy-out and/or severance of employment arrangements in connection with the Closing of this Agreement, which will be paid in advance of the Closing and/or as part of the Allowance in the Creditors’ Trust.

15xvi(b) – See 15xvi(a) and (c).

15xvi(c) – The following employees will be retained as employees of the College or contractors of the Creditors’ Trust after the Closing:

Retained Employee of the College:

Accountant	Lynn Boles	No later than 12/31/20
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Contractors to be Engaged by the Creditors Trust:

Registrar	Cathy Fuller	No later than 8/31/2020
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Financial Aid	Kristin Hmieleski	No later than 8/31/2020
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CFO	Robert Webber	No later than 9/30/2020
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IT	Michael Reilly	No later than 8/31/2020
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Payroll	Laura Champagne	No later than 8/31/2020
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15xvi(e) – None.

SCHEDULE 15xvii
ENDOWMENT AND INVESTMENT

See detailed listing previously provided to Emerson

SCHEDULE 15xviii

TAXES

All taxes required to be paid as of the date hereof have been paid.

SCHEDULE 15xx
UNDISCLOSED LIABILITIES

See aging report dated June 4, 2020 showing unpaid accounts payable not reflected on the Interim Balance Sheet, previously provided to Emerson.

See listing of each disbursement greater than \$5,000 since the Interim Balance Sheet Date through June 2, 2020, previously provided to Emerson.

Marlboro has agreed to sell its campus and related personal property to Democracy Builders Fund, Inc.

Marlboro has entered into a Paycheck Protection Program Loan in the amount of \$1,001,973 (principal amount of \$1,000,000 plus \$1,973 in interest).

Marlboro has certain obligations under the [REDACTED] Charitable Gift Annuity that require a quarterly payment of \$360 during the lifetime of the donors.

All recent claims have been resolved by the College.

See Marlboro Disclosure Schedule 15xvi.

Any liabilities since the Interim Balance Sheet Date that the Parties have agreed will be paid by the Allowance.

SCHEDULE 15xxi

ABSENCE OF CERTAIN CHANGES, ETC.

See Schedule 15xx.

Marlboro will terminate all contracts other than Assumed Contracts, contracts to be assigned to Democracy Builders Fund, Inc. in connection with the campus and any contracts that will be paid from the Creditors Trust.

Marlboro has entered into the following contracts since the Interim Balance Sheet Date:

-
1. Agreement with Tim Grader for communications services.
 2. Agreement with William Kaplan regarding the marketing and sale of the campus.
 3. Agreement with Colliers International regarding the marketing and sale of the campus.
 4. Agreement with Verdolino and Lowey, P.C. regarding operational wind down services.
 5. Agreement with ATC Group Services regarding an environmental site assessment.
-

Marlboro accelerated and terminated its contract with its campus food service provider.

Marlboro has paid bonus and salary increases for certain employees in an aggregate amount of approximately \$54,000 since the Interim Balance Sheet Date.

EMERSON DISCLOSURE SCHEDULES

- 1. SCHEDULE 16i – ORGANIZATION AND QUALIFICATION**
- 2. SCHEDULE 16iii – AUTHORITY; NO CONFLICTS; CONSENTS**

SCHEDULE 16i

ORGANIZATION AND QUALIFICATION

1. Emerson engages in fund-raising activities in various states. It is registered to do so in Massachusetts and California. It is currently investigating its obligation, if any, to register in other states in which it might be considered to be engaging in such activities.

SCHEDULE 16iii

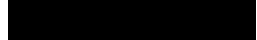
AUTHORITY; NO CONFLICTS; CONSENTS

1. NECHE consent.

EMERSON ACQUISITION SCHEDULE A

Assigned Contracts

Marlboro College Pooled Income Fund Trust Agreement

 Gift Annuity

Marlboro is a party to contracts with several firms that manage the investment of Marlboro's investment and endowment funds. Marlboro will be terminating these contracts and Emerson will enter into new contracts with the managers that it plans to continue using in connection with the investment and endowment funds to be transferred to Emerson.

Gift Agreements related to the following endowment funds:

M. Brenn Green Scholarship Fund

Roland W. Boyden Humanities Chair in History and Philosophy

Jo'An Noble Sterr Family Prize

Thompson Scholarship Fund

Lucy DeLaurentis Endowed Scholarship Fund for
The Lucy DeLaurentis Memorial Prize (F/K/A "Lucy DeLaurentis Memorial
Scholarship")

Hiro Watanabe Scholarship

Ryan Larsen Memorial Prize

The Lillian Farber Chair in the Liberal Arts and Technology

EMERSON ACQUISITION SCHEDULE B

Assigned Leases

There are no Assigned Leases.

EMERSON ACQUISITION SCHEDULE C

Assigned Intellectual Property Contracts And Leases

There are no Assigned Intellectual Property Contracts or Leases.

EMERSON ACQUISITION SCHEDULE D

Transferred Intellectual Property Assets

All rights, title and interest to the name “Marlboro College” and in and to the trade names, trademarks, and other Intellectual Property, as well as all registrations and applications for registrations, set forth on Schedule 15ix.

EMERSON ACQUISITION SCHEDULE E

Tangible Personal Property

The Tangible Personal Property includes the items indicated below, as well as the Marlboro Student Records.

Tangible Personal Property to be transferred to Emerson College, as more specifically listed on the attached schedules.

Personal Property	Description	Notes
Faculty Library Materials	Faculty going to Emerson have selected library materials that are required for teaching and are not in Emerson or Fenway Consortium collections.	See 'Library Materials' attached; titles only
Science and Visual Arts Faculty Equipment	As identified by MC and EC faculty	See 'Academic Materials' attached
Information Technology Equipment	Faculty laptops	See 'Information Technology' attached
The Lillian Farber Collection	A discrete collection of photography	

<u>Library Materials</u>
<u>Library Materials</u>
<u>Title</u>
Women in mathematics: the addition of difference
Women and science: social impact and interaction
Women in science: career processes and outcomes
Energy: physical, environmental, and social impact
Energy: production, conversion, storage, conservation, and coupling
Energy systems and sustainability
Energy: its use and the environment
Consuming power: a social history of American energies
Energy at the crossroads: global perspectives and uncertainties
Pathways to astronomy
Astronomy today
College physics: a strategic approach
College physics. Vol. 1: Student Workbook [chapters 1 - 16]
College physics. Vol. 2: Student Workbook, [chapters 17 - 30]
Physics for scientists and engineers: a strategic approach
Physics for poets
Principles & practice of physics
Philosophical concepts in physics: the historical relation between philosophy and scientific theories
Mechanics from Aristotle to Einstein
The simple physics of energy use
Chemical evolution and the origin of life
Life in the universe
Frontiers of astrobiology

An introduction to astrobiology
Astrobiology: a multidisciplinary approach
jewish feminism and intersectionality
queering black atlantic religions
feminist ethnography
decolonizing anthropology
different kind of ethnography
anthropological practice
cold war anthropology
reframing visual social science
beautiful rising
Impulse to Act
how to read a protest
lovecidal: walking with the disappeared
decolonizing sexualities
caliban and the witch
power interrupted
Mapping Feminist Anthropology in the Twenty-First Century
ecological borderlands
ethnographies of us empire
future of us all
downwardly global
Venceremos?
territories of the soul
Performing Afro-Cuba
managing african portugal

Political Anthropology: An Introduction
raciolinguistics
Linguistic Diversity and Social Justice
A reader in medical anthropology
Medical Anthropology: A Biocultural Approach
Sex, or the Unbearable
Honeypot
Queer Diasporas
Captive Genders
perversity (new formations)
queer roots for the diaspora
worlding cities
Necropolitics
psychoanalysis of racism, revolution and nationalism
women's political activism in palestine
nationalism and the imagination
youth movements and elections in eastern europe
Depression: a public feeling
Integrating Mindfulness into Anti-Oppression Pedagogy
culturally sustaining pedagogies
progressive dystopia
pedagogy of pathologization
counternarratives from women of color academics
empire in the air
twilight of cutting
multiple medical realities

Aliceheimer's
marbles
lissa
queering visual cultures
katherine dunham
crumpled paper boat
Queer Narratives of the Caribbean Diaspora
because when god is too busy
imperial intimacies
post-communist mafia state
me as her again
mohawk interruptus
earth beings
Pussy Riot
she's beautiful when she's angry
Three Apples Fell From Heaven
Cultural Aging
Aging in America
Agedby Culture
Iron Cages
Commemorations
Unequal freedom
Civic Ideals
The Right to Vote-Reserve
Who Built America, Volumes 1 and 2
The rise and fall of American growth

Making all the Difference
From Tenements to the Taylor Homes
Raising America
Get out of my room
The Name of War
History Comes Alive
World Systems Analysis
Born Bright: A Young Girl's Journey from Nothing to Something in America
The Oxford Handbook of Social Movements
Essential Readings in World Politics
The Retreat of Western Liberalism
Great Transformations
The Fifth Risk
Capitalism, Democracy, and Welfare
Welfare Democracies and Party Politics
The Three Worlds of Welfare Capitalism
Varieties of Liberalization and the New Politics of Social Solidarity
Austerity: The History of a Dangerous Idea
Gender and the Welfare State
The Oxford Handbook of the Welfare State
The Big Picture: On the Origins of Life, Meaning, and the Universe Itself
Red Famine: Stalin's War on Ukraine
The Morning They Came for Us: Dispatches from Syria
The Favorite Game
The Big Green Tent
Behavioral genetics

Revisiting race in a genomic age
Not by genes alone
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Endowment and Investments

All endowment and other funds shall be transferred to Emerson.

From: [Jeff McMahan](#)
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Date: Friday, July 17, 2020 8:51:13 AM

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Jamie -

Here's my summary of the application of the funds.

There are 24 tenured/tenure track faculty:

- 20 to Emerson
- - 18 of 20 in regular status at EC
- - 2 took early buyout to emeriti status at EC
- 1 retired
- 3 went elsewhere.

2 non tenure/tenure track.

26 total faculty.

All 26 faculty receives one or more of the following payments:

- \$4000 summer stipend
- \$7000 payment for delay of sabbatical
- \$30000+ payment for early termination of tenure, retirement or severance.

There are 4 senior faculty, each of whom receives a payment of at least [REDACTED] for retirement, severance or early tenure buyout.

Given that the fund consists of approximately \$300,000, there is more than \$150,000 being divvied up amongst all faculty and more than \$150,000 (without double counting) being divvied up among senior faculty.

Jeff.

Jeffrey J. McMahan
Dinse P.C.
209 Battery Street
Burlington, VT 05401
jmcmahan@dinse.com
802-859-7013 (direct)
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