

Request to Approve DualEnroll Software Purchase

Recommendation:

Requesting Board approval to purchase DualEnroll software. The total amount of the request is \$212,555.74 for a 5-year term. This purchase will be made utilizing Fund for the Improvement of Postsecondary Education (FIPSE) Grant.

Summary:

This purchase is requested for establishing an effective and efficient enrollment process for our Early College students, both dual and concurrent. As of Fall 2020, Early College students comprised approximately 44% of NPC's total enrollment and is targeted to grow. Our current manual enrollment process has created a bottleneck for Early College student application and registration. DualEnroll can significantly improve the process by creating a dynamic workflow, connecting our different stakeholders to help grow enrollment by providing a better application/registration experience for all parties involved. This software can also assist in the collection of records for regional and national accreditation aimed at dual and concurrent enrollment programs. The purchase includes implementation and annual license fees for 5 years.

The cost for the software is \$194,239 (which includes the first year/setup cost of \$53,800 and annual license fee of \$31,800 for Year 1, \$33,072 for Year 2, \$34,395 for Year 3, \$35,771 for Year 4, and \$37,201 for Year 5) and tax is \$18,316.74 (which includes the 3% or \$5,827.17 due to the City of Holbrook), for a total price of \$212,555.74. The purchase meets sole source guidelines. This purchase will be made utilizing FIPSE Grant that has been allocated to the college and will not use NPC budget funding for the duration of the grant period.



**DUALENROLL.COM
MASTER SERVICES AGREEMENT**

THIS MASTER SERVICES AGREEMENT, together with all attached Service Addendums and other exhibits, if any (collectively, the "**Agreement**"), is entered into as of the _____ day of _____, 2020 (the "**Effective Date**"), by and between **CourseMaven, Inc.**, a Delaware corporation d/b/a **DualEnroll.com**, with its principal offices located at 43498 Butler Place, Leesburg, VA 20176. ("Company") and Northland Pioneer College, located at 102 N 1st Avenue, Holbrook, AZ 86025 ("College").

Company operates DualEnroll.comtm, a cloud-based platform that facilitates the college enrollment process for students still in high school ("**DualEnroll**"); and College desires to utilize DualEnroll, as set forth in this Agreement.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

1. Services.

- A. "**Service(s)**" means the DualEnroll platform, including any associated applications, components, features and technology, and products and services made available to College in the course of using the Service ("**Service Components**"). Company develops, configures, operates, and maintains the Services, which College will access via a Company-designated web site or IP address.
- B. "**Service Addendum(s)**" means the document(s) describing the College configuration requirements, and the applicable fees, together with any additional terms agreed to between the parties regarding the Service(s). Each executed Service Addendum, shall become a part of this Agreement, and constitute an order for such Service(s).
- C. "**Service Administrator(s)**" means individuals authorized by College to execute Service Addendums, administer College's use of the Service; and authorize College employees, representatives, and contractors ("**User(s)**") to use the Service on behalf of College, pursuant to the terms of this Agreement.

2. Right to Use Service.

- A. Company hereby grants to College a non-exclusive, non-transferable, right to use the Service(s), in object code only, solely (i) for College's own internal business purposes; (ii) during the Term (as defined below) of this Agreement; and (iii) subject to the terms and conditions of this Agreement and applicable Service Addendum. Any and all rights not expressly granted to College are reserved by Company. With respect to the Service, College shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit the Service; (ii) modify or make

derivative works based upon it; (iii) reverse engineer or otherwise decompile or disassemble; or (iv) make use of it in any way to: (a) build a competitive product or service; (b) build a product using similar ideas, features, functions or graphics; or (c) copy any of its ideas, features, functions, or graphics. College may use the Service only for legitimate and lawful business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or in violation of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks. College shall comply with all applicable laws and regulations concerning export, data privacy and protection, and cooperate with Company in connection with compliance thereto. Company retains the right to terminate the Service or this Agreement immediately for any breach by College of this Section.

- B. From time to time, routine maintenance and periodic system repairs, upgrades, and reconfigurations may result in temporary impairment or interruption in Service(s). Company does not control access to the Internet or make any warranties with respect to its availability. Company shall attempt to minimize the duration of and schedule any such interruptions outside of normal business hours.

3. College's Responsibilities. College is responsible for all activity by Service Administrators and its Users. College, Service Administrators and its Users shall all abide by the Company's Terms of Service ("TOS") available on its website at www.dualenroll.com, which governs the use of Company Services and its network, systems, and facilities ("**Infrastructure**"). Company expressly reserves the right to modify its TOS from time to time. Posting a revised or updated version of the Company TOS on its website shall constitute notice to College. College shall abide by all applicable laws and regulations in connection with College's use of the Service. College shall: (i) notify Company immediately of any known or suspected breach of security or unauthorized use of the Service; and (ii) report to Company immediately and use best efforts to prevent any known or suspected attempts to copy or distribute the Service or Service Components. College will provide to Company in a timely manner (i) notification of any Service-related issues that require assistance; (ii) assistance by a representative of College qualified to address issues related to set up, maintenance, and support of the Services; and (iii) cooperation with any other reasonable Company requests to enable Company to perform its duties hereunder. In the event College does not provide, in a timely manner, the required assistance and/or access, Company may suspend Service(s) and shall not be liable for any deficiency or delay in performance that results from College's failure to cooperate as required, including any remedies under this Agreement.

4. Data Use. In the course of performing its obligations under this Agreement, Company may collect and use data, solely in compliance with the terms of this Agreement, the then current privacy policy of Company, and applicable law. College represents and warrants that unless it has provided written notice to the contrary, College complies with such privacy policy and that, with respect to any content or data it

provides to Company it has the right to provide such content or data.

5. Intellectual Property. Each party shall retain all rights, title, and interest, in and to its patents, trademarks, service marks, logos, copyrights, trade secrets, and any other intellectual property (“**Intellectual Property**”). Company expressly retains all rights, title, and interest to DualEnroll, the Service, Service Components, and all associated Intellectual Property. Any Intellectual Property produced, conceived, or otherwise developed by or for Company hereunder shall be the exclusive property of Company. Each party grants the other a limited, non-exclusive, revocable, nontransferable, non-sub-licenseable, royalty-free license to use certain Intellectual Property of the other party in connection with this Agreement, as designated by and in accordance with the guidelines of such granting party and subject to the terms of this Agreement.

6. Confidentiality. “**Confidential Information**” means all written or oral information, disclosed by one party (the “**Discloser**”) to the other (the “**Recipient**”), identified as confidential or that a reasonable person would consider confidential or proprietary based on its nature and the circumstances surrounding its disclosure. The Recipient will keep confidential any Confidential Information disclosed to it by the Discloser; provided such information shall not be considered proprietary once it is in the public domain by no fault of the Recipient. With respect to any Confidential Information, the Recipient shall: (i) maintain confidentiality using the same care that it would use for its own confidential information, but in any event with reasonable care and in accordance with the Family Educational Rights and Privacy Act; (ii) use the confidential information solely in connection with this Agreement; (iii) cease use of such confidential Information immediately upon termination of this Agreement and either return or destroy it upon request of the Discloser; and (iv) not attempt to reverse engineer or create derivative works from or using the Confidential Information. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given notice to the other Party, if legally permissible, and shall have provided such assistance as may be reasonably requested to limit or prevent such requirement of disclosure.

7. Payment Terms.

- A. **License Fees:** Company shall bill College for the Service for the full License Term, as defined in the applicable Service Addendum, due upon the earlier of 30 days from invoice date or the License Start Date, as defined in such Service Addendum. All amounts are stated and payable in U.S. dollars and exclusive of any taxes. All taxes other than taxes based on Company’s net income will be the responsibility of College. All payment obligations are non-cancelable, and all amounts paid are non-refundable. Late payments are subject to interest at the rate 1% per month (or the maximum rate permitted by applicable law, whichever is less). Upon notice, Company may suspend or terminate Service if payments are more than thirty (30) days past due. College shall be responsible for all reasonable costs incurred by Company in connection with collecting amounts past due, including without limitation, attorney and collection fees.

- B. Student Fees and Tuition: Company shall remit monies collected from Students net of processing fees, in compliance with the payment schedule and detailed reporting formats outlined in the Service Addendum(s). Company may, at its discretion, utilize a third party service for processing of these payments.

8. Term and Termination.

- A. The initial term of this Agreement is stated in the Services Addendum (the “Term”) and will automatically renew for successive Terms of the same duration unless either party provides notice of non-renewal at least ninety (90) days prior to expiration of the then-current Term.
- B. A party may terminate the Agreement (i) for a breach of the Agreement by the other party not cured within thirty (30) days of receiving notice that it is in breach; (ii) upon notice, if the other party (a) is adjudged insolvent or bankrupt, (b) has instituted against it and not dismissed within thirty (30) days after filing, or institutes any proceeding seeking relief, reorganization or arrangement under any laws relating to insolvency, (c) makes any assignment for the benefit of creditors, (d) appoints a receiver, liquidator or trustee of any of its property or assets, or (e) liquidates, dissolves or winds up its business, or (iii) immediately if any change occurs in any applicable laws or regulations that would, in that party’s reasonable opinion, render the party’s performance hereunder illegal or otherwise subject to legal challenge.

Upon expiration or termination of this Agreement, all licenses rights granted hereunder shall immediately terminate and each party shall immediately cease using the other party’s Intellectual Property and Confidential Information.

9. Representations and Warranties.

- A. Each party hereby represents and warrants that: (i) it is a legal entity duly organized, validly existing and in good standing; (ii) it has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder; (iii) it will avoid deceptive, misleading or unethical practices that could adversely affect the performance of the other party’s obligations under this Agreement or damage the reputation of the other party; (iv) its performance of its obligations under this Agreement will not knowingly violate any other agreement between such party and any third party, and (vi) its performance related to this Agreement will comply with all applicable law.
- B. Except for the express warranties set forth in this agreement and to the maximum extent permitted by applicable law, each party disclaims any and all other representations and warranties, whether express, implied or statutory, including, but not limited to, any warranties of merchantability, fitness for a particular purpose, data accuracy, system integration, title, non-infringement and/or quiet enjoyment. No warranty is made by either party on the basis of trade usage, course of dealing or course of trade.

- C. **Software Security and System Performance.** Company shall (i) establish and maintain industry standard technical and organizational measures to help to protect against accidental damage to, or destruction, loss, or alteration of the materials; (ii) establish and maintain industry standard technical and organizational measures to help to protect against unauthorized access to the Services and materials; and (iii) establish and maintain network and internet security procedures, protocols, security gateways and firewalls with respect to the Services. The Company software and its components are equipped and/or designed with systems intended to prevent industry known system attacks (e.g., hacker and virus attacks) and unauthorized access to confidential information. The Company will maintain and comply with an internal security policy appropriate under industry standards for organizations of similar size and business operations. Company will utilize commercially reasonable best efforts to ensure overall system response times within normal industry standards; College acknowledges that system performance for individual users is impacted by factors including user network configuration and bandwidth and beyond Company's ability to control.

Company will notify the College of any breach of the system College data soon as feasible based on the circumstances but in no event more than 7 days from discovery or detection. Company will maintain professional liability insurance and other coverages (including but not limited to cyber liability insurance) in the event of a breach. The College may immediately terminate at its sole discretion upon notice of a breach, at no cost to the College.

10. Limitation of Liability. In no event shall either party be liable for any incidental, indirect, special, consequential or punitive damages, regardless of the nature of the claim, including, without limitation, lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation or liabilities to third parties arising from any source, even if advised of the possibility of such damages. Except with respect to breaches of confidentiality and indemnification obligations, the cumulative liability of a party for all claims arising from or relating to this Agreement, including, without limitation, any cause of action sounding in contract, tort, or strict liability, shall not exceed the amounts paid or payable under this Agreement during a twelve (12) month period. Any cause of action College may have with respect to the Service(s) shall be barred unless it is commenced or asserted within one (1) year of the earlier of (i) the effective date of expiration or termination of this Agreement; or (ii) the date after the claim or cause of action arises. The failure of Company to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Company in writing.

11. Indemnification. Each party, at its own expense, will indemnify, defend, and hold harmless the other party, its subsidiaries, affiliates and assigns, and its and their officers, directors, employees and agents, from and against any loss, demand, cause of action, debt or liability ordered by a court or agreed upon in settlement arising out of a third-party claim resulting from (i) patent or copyright infringement, misappropriation of confidential information or violation of other intellectual property rights or other proprietary rights or licenses, including, without limitation, trademark or trade secret rights related to its

Intellectual Property; and (ii) any breach or alleged breach of its representations and warranties under this Agreement. Company shall have no indemnification obligation, and College shall indemnify Company pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of the College's products, service, hardware, or business processes. In the event that the goods or services purchased hereunder are determined to be infringing, or in Company's reasonable determination are likely to be found infringing by a court of competent jurisdiction, then Company shall (at its sole discretion) modify or replace the goods, or re-perform the services, in a non-infringing (but otherwise conforming) manner, or procure any required license. If none of these alternatives are reasonably available, Company will refund to College the amounts actually paid for the infringing goods or services.

12. Indemnification Process. The party seeking indemnification hereunder ("**Indemnified Party**") shall promptly inform the other party ("**Indemnifying Party**") of any suit or proceeding filed against the Indemnified Party for which the Indemnified Party is entitled to indemnification hereunder. The Indemnifying Party may direct the defense and settlement of any such claim, with counsel of its choosing. The Indemnified Party will provide the Indemnifying Party, at the Indemnifying Party's expense, with information and assistance reasonably necessary for the defense and settlement of the claim. The Indemnified Party shall have the right, but not the obligation, at its sole expense to participate in (but not to control) the defense of any such suit or proceeding.

13. Additional Provisions

- A. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without regard to conflicts of law. Each party submits to the exclusive jurisdiction of the state and federal courts located within Loudoun County.
- B. Assignment.** Neither party may assign this Agreement without prior written consent of the other party, not to be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, either party may assign this Agreement upon notice to (i) a successor-in-interest as a result of a merger or consolidation or in connection with the sale of all or substantially all of its assets or (ii) an affiliate of such party.
- C. Survival.** The obligations of the Parties which, by their nature, would continue beyond termination or expiration of this Agreement shall survive termination or expiration of this Agreement, including, without limitation, Sections 5-8 and 10-13.
- D. Notice.** Any notice or other communication which, under this Agreement or otherwise must be given or made by either party, shall be in writing and deemed served when delivered. Notice may be delivered by mail, in person, or by electronic mail to the address provided by each party.
- E. General.** This Agreement: (i) covers the parties' entire agreement, and supersedes all prior discussions and writings between them, relating to its subject matter; (ii) will be binding upon and

inure to the benefit of the parties, their successors and permitted assigns; (iii) creates no agency, partnership or employer-employee relationship between the parties; their relationship is that of independent contractors; and (iv) has no third party beneficiaries. If any provision in the Agreement is deemed invalid, illegal, or otherwise unenforceable, such provision shall be enforced as nearly as possible in accordance with the parties' intent; the remainder will remain in full force and effect. No failure or delay by a party in enforcing this Agreement shall be construed as a waiver of any of its rights under it. No party shall be deemed in default of this Agreement if the performance of its obligations is delayed or prevented by events beyond its reasonable control.

IN WITNESS WHEREOF, each of the Parties hereto has duly executed and delivered this Agreement as of the Effective Date.

CourseMaven, Inc.

By: Janet Van Pelt

Name: Janet Van Pelt

Title: CEO

COLLEGE: _____

By: _____

Name: _____

Title: _____

Service Addendum 1

Annual License Fee—Registration module + Instructor Ongoing Reqmts.	\$31,800
One-time Implementation Fee—Registration and Instr. Ongoing Reqmts.	\$22,000
First Year Cost—Registration and Instr. Ongoing Reqmts.	\$53,800
Annual License Fee Year Two	\$33,072
Annual License Fee Year Three	\$34,395
Annual License Fee Year Four	\$35,771
Annual License Fee Year Five	\$37,201
Total Five Year Cost	\$194,239

License fee is based on program size up to 7,000 duplicated registrations and 3,500 courses taught by high school instructors. If duplicated registrations exceed this number in any year, the license fee will be adjusted for the following year based on the DualEnroll pricing then in effect, but no adjustment will be required for the year of the overage. Pricing is valid for 90 days from date signed by CourseMaven, Inc.

Service Components

- Process discovery and design consulting including best practices
- Configuration of college-specific workflows
- Facilitate data exchange with College's student system
- Access and utilization of the configured DualEnroll.com platform
- Training and product orientation recorded and live webinars
- Documentation - user guides in PDF format
- Support
- Reporting

This Service Addendum is approved as of the last date below:

CourseMaven

COLLEGE: _____

By: _____

By: _____

Name: Janet Van Pelt

Name: _____

Title: CEO

Title: _____

Date: July 29, 2021

Date: _____