

## STUDENT REFUND MANAGEMENT SERVICES AGREEMENT

This STUDENT REFUND MANAGEMENT SERVICES AGREEMENT (the “Agreement”) between FM Systems LLC d/b/a Tuition Management Systems LLC, a Delaware limited liability company having an address at 171 Service Ave, Suite 200, Warwick, Rhode Island 02886 (“TMS”) and University of California, a Public University having an address at Office of the President, 1111 Franklin Street, 10th Floor, Oakland, CA 94607-5200 (“School”) is effective as of August 22, 2016 (the “Effective Date”). TMS and School are hereinafter collectively referred to as the “Parties” and each individually as a “Party.”

### RECITALS

**WHEREAS**, TMS provides a technical platform and related services to assist colleges and universities with their delivery of Credit Balances (as defined herein) to Students (as defined herein) (the “Services”); and

**WHEREAS**, School wishes to engage TMS to perform the Services.

**NOW THEREFORE**, in consideration of the promises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### SECTION 1 DEFINITIONS

“ACH” shall mean automated clearinghouse.

“ACH Method” shall have the meaning set forth in Section 2.3(a)(i)(B) of this Agreement.

“Agreement” shall have the meaning set forth in the preamble of this Agreement.

“ATM” shall mean an automatic teller machine.

“Award Year” shall mean the period of time from July 1 of one year through June 30 of the following year.

“Business Day” shall mean any day that is not (a) a Saturday or Sunday, or (b) a day on which banks in the State of Rhode Island are authorized to be closed.

“Card Method” shall have the meaning set forth in Section 2.3(a)(i)(C) of this Agreement.

“Card Method Bank” shall mean the FDIC insured financial institution at which the Prepaid Card Accounts are held.

“Cash Method” shall have the meaning set forth in Section 2.3(a)(ii) of this Agreement.

“Check Method” shall have the meaning set forth in Section 2.3(a)(i)(A) of this Agreement.

“Confidential Information” shall have the meaning set forth in Section 7.1 of this Agreement.

“Consumer Information” shall have the meaning set forth in Section 7.1 of this Agreement.

“Credit Balance” shall mean the funds remaining and due to a Student after such Student’s loans and other financial aid remittances, including but not limited to Title IV Higher Education Act program funds, have been credited to the Student’s account at School.

“Delivery Deadline” shall mean (a) fourteen (14) days after the date on which the Credit Balance occurred if the Credit Balance occurred after the first day of class of a payment period (as such term is defined in 34 C.F.R. § 668.4), or (b) fourteen (14) days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

“Delivery Date” shall mean the date on which a Student’s Credit Balance is remitted to such Student via a Delivery Method.

“Delivery Method” shall have the meaning set forth in Section 2.3(a) of this Agreement.

“Disclosing Party” shall mean the Party disclosing any Proprietary Information hereunder, whether such disclosure is directly from or through the Disclosing Party’s Personnel.

“Early Termination Fee” shall have the meaning set forth in Section 3.3 of this Agreement.

“Education Record” shall have the meaning set forth in 20 U.S.C. § 1232g(a)(4).

“Effective Date” shall have the meaning set forth in the preamble of this Agreement.

“End User” shall have the meaning set forth in Section 2.2 of this Agreement.

“FDIC” means the Federal Deposit Insurance Corporation.

“FERPA” shall have the meaning set forth in Section 4.3 of this Agreement.

“Force Majeure Event” shall have the meaning set forth in Section 11.2(b)(3) of this Agreement.

“Force Majeure Event Cure Notice” shall have the meaning set forth in Section 11.2(b)(3) of this Agreement.

“Force Majeure Event Notice” shall have the meaning set forth in Section 11.2(b)(3) of this Agreement.

“Good Funds” shall mean the dollar amount of a Credit Balance that is successfully remitted to the Settlement Account by School.

“HEA” shall mean the Higher Education Act of 1965, as amended and its implementing regulations.

“Indemnified Party” shall mean a Party, its parent and affiliates, and each of the Party’s, parent’s, or affiliate’s respective current, former and future officers, directors, employees, agents and contractors, as any of the foregoing shall have a right to be indemnified pursuant to Section 9 of this Agreement.

“Indemnifying Party” shall mean a Party that is obligated to indemnify an Indemnified Party pursuant to Section 9 of this Agreement.

“Initial Term” shall have the meaning set forth in Section 11.1 of this Agreement.

“Intellectual Property” shall have the meaning set forth in Section 6.1 of this Agreement.

“Non-Performing Party” shall have the meaning set forth in Section 11.2(b)(3) of this Agreement.

“Notice of Election” shall have the meaning set forth in Section 9.3 of this Agreement.

“Parties” and “Party” shall have the meaning set forth in the preamble of this Agreement.

“Personnel” shall mean the employees, agents, affiliates, parent, contractors (including Vendors), and subcontractors of a Party.

“Prepaid Card” shall mean the card used to access a Prepaid Card Account.

“Prepaid Card Account” shall mean a financial account at an FDIC-insured depository institution opened by a Student in connection with the Card Method.

“Privacy Requirements” shall have the meaning set forth in Section 7.5 of this Agreement.

“Proprietary Information” shall have the meaning set forth in Section 7.1 of this Agreement.

“Receiving Party” shall mean the Party receiving any Proprietary Information hereunder, whether such disclosure is received directly from or through the Receiving Party’s Personnel.

“Refund Transmission File” shall mean a file sent by School to TMS confirming (a) the amount of the Credit Balance remitted to TMS for deposit, and (b) corresponding Student information, including student identification number and the first and last names of the applicable Student.

“Requirements of Law” shall mean (a) any federal, state, county, or local law, ordinance, statute, rule, regulation, judgment, order, decree, injunction, permit, issuance, or other determination, or finding of any governmental authority or self-regulatory organization or final and binding determination of any arbitrator applicable to or binding upon such Party or to which such Party is subject, and (b) any treaty, rule or regulation, regulatory guidance, or determination of (or agreement with) an arbitrator or governmental authority.

“Renewal Term” shall have the meaning set forth in Section 11.1 of this Agreement.

“School” shall have the meaning set forth in the preamble of this Agreement.

“School Portal” shall mean the School-branded, web-based portal owned, hosted, and maintained by TMS, accessible to Students, through which Schools may interactively manage information related to the Services.

“Secretary” shall mean the Secretary of the Department of Education or an official or employee of the Department of Education acting therefor under a delegation of authority.

“Services” shall have the meaning set forth in the first recital of this Agreement.

“Settlement Account” shall mean a trust account established for the benefit of Schools at the Settlement Account Bank that holds Good Funds until they are remitted to Students.

“Settlement Account Bank” shall mean the FDIC insured financial institution at which the Settlement Account is held.

“Student” shall mean an individual that is enrolled in School.

“Student Portal” shall mean the consumer-facing section of the School Portal that is accessible to authenticated Students.

“Term” shall have the meaning set forth in Section 9.1 of this Agreement.

“Tier One Arrangement” shall mean the type of arrangement between a school and a third-party servicer that is described in 34 C.F.R. § 668.64(e)(1).

“TMS” shall have the meaning set forth in the preamble of this Agreement.

“Transition Period” shall have the meaning set forth in Section 11.3 of this Agreement.

“Vendor” shall have the meaning set forth in Section 2.7 of this Agreement.

## **SECTION 2 SERVICES**

2.1. General. TMS shall provide the Services to School as set forth in, and subject to, this Agreement. The Parties agree that those Services provided by TMS related to the delivery of Credit Balances via the Card Method constitute a Tier One Arrangement.

2.2. School Portal.

(a) General. TMS shall host and maintain the School Portal, which it shall make available to those individuals who have been granted access to it by School (each, an “End User”). School shall grant such access solely to those School Personnel and Students who have a need to use the School Portal, and shall grant Students access to the Student Portal only. School shall authenticate the identity, and, in the case of a Student, enrollment status, of each End User prior to granting School Portal access to such End User. School shall grant access to Student End Users by sending each authenticated Student a unique link to the Student Portal. At least fourteen (14) days prior to a Student’s Delivery Date, School shall transmit to TMS via the School Portal a file containing certain information applicable to such Student, to the extent permitted by Section 2.4(e) of this Agreement, sufficient to enable TMS to authenticate the identity of such Student End User when such Student End User accesses the Student Portal via the unique link provided by School. If a Student is no longer enrolled at School, or the applicable School Personnel no longer has a need to access the School Portal, as the case may be, School shall immediately terminate the access rights of the applicable individual. School shall utilize the School Portal to (i) transmit enrollment files; (ii) transmit Refund Transmission Files; (iii) manage any exceptions that occur in the delivery process or in the process of transferring Credit Balances to the Settlement Account; (iv) access all confirmation and processing reports and run reports on an ad-hoc basis, and (v) manage Student access rights. The Student Portal shall enable Students to select a Delivery Method, review historical transactions, and manage Student Portal profile credentials. School shall ensure that all End Users use the School Portal solely in the manner for which it was intended and in connection with the Services, and School shall be liable for all actions of End Users involving the School Portal.

(b) Support. TMS shall provide basic support for the School Portal to School at no additional charge, and shall use commercially reasonable efforts to make the School Portal available twenty four (24) hours a day, seven (7) days a week, except for: (i) planned downtime, of which TMS shall give School at least eight (8) hours written notice, which such notice may be via electronic mail, and (ii) any unavailability caused by circumstances beyond TMS’s reasonable control, including without limitation, Force Majeure Events, Internet service provider failures or delays, or denial of service attacks.

(c) Content. TMS shall ensure that the content of the Student Portal complies with the following requirements; provided, however, that School shall be liable for any content on the Student Portal that it requires TMS to publish; provided further, that School shall not require TMS to publish any content on the Student Portal that would not comply with the requirements of this Section 2.2(c) or with Requirements of Law:

- (i) The Student Portal shall expressly state that the Student is not required to obtain a financial account or access device offered by or through a specific financial institution;
- (ii) The Delivery Method options shall be described and presented in a clear, fact-based, and neutral manner;
- (iii) No Delivery Method shall be preselected for the Student;
- (iv) The ACH Method shall be the first Delivery Method displayed, and shall be displayed prominently;
- (v) The Student Portal shall include a URL for the terms and conditions of a Prepaid Card Account; and
- (vi) By no later than July 1, 2017, the Student Portal shall list and identify the major features of, and commonly assessed fees associated with, a Prepaid Card Account.

### 2.3. Credit Balance Delivery Options

(a) Available Delivery Methods. School shall identify to TMS in writing the method(s) of Credit Balance delivery that School offers to Students (each, a "Delivery Method"). School may deliver Credit Balances to Students by (i) transferring the amount of the Credit Balance into the Settlement Account for delivery to a Student via (A) paper check (the "Check Method"), (B) an ACH transfer to a deposit account in the name of the student at a financial institution which such deposit account is not a Prepaid Card Account (the "ACH Method"), (C) an electronic funds transfer to such Student's Prepaid Card Account (the "Card Method"), or (ii) providing cash to the Student in an in-person transaction (the "Cash Method"). School may offer any one or combination of the foregoing Delivery Methods; provided however, that if School offers the Card Method, School shall also offer the ACH Method. Except to identify it on the Student Portal as a Delivery Method, TMS shall not administer, and shall not be liable for any aspect of, the delivery of Credit Balances via the Cash Method. Regardless of whether a Student selects a Delivery Method or which Delivery Method a Student has selected, School represents, warrants, and covenants, that it shall deliver the Credit Balance to the Student by no later than the Delivery Deadline in a manner compliant with the HEA. Neither Party shall take any action under this Agreement that would result in the ACH Method being more burdensome for the Student than the Card Method.

(b) Preference Selection. TMS shall display all Delivery Methods on the Student Portal from which a Student may electronically select a preference. School may modify the Delivery Methods from time to time by providing written notice to TMS, and the Student Portal shall reflect the change on the later of (i) three (3) Business Days thereafter, or (ii) the date on which School has requested the change to take place. TMS shall use commercially reasonable efforts to honor the Student's Delivery Method preference; provided, however, that if honoring such Delivery Method preference is not commercially reasonable or would violate Requirements of Law, TMS shall notify School via the School Portal. School may override such Delivery Method Preference and select an alternative Delivery Method Preference, which such Delivery Method Preference shall not be the Card Method. Upon the reasonable written request from School, TMS may, in its sole discretion, arrange for School to receive a paper check that the applicable Student can pick up at School. In the event that a Credit Balance is delivered via a method other than one selected by the Student, School shall be responsible for communicating any such deviation to the applicable Student. Students may change their Delivery Method preferences up until one hour before a Refund Transmission File is received by TMS. Changes received (A) within an hour after TMS has received the Refund Transmission File, or (B) subsequent to TMS's receipt of the Refund Transmission File shall be applied on future disbursements. If School implements its own Delivery Method preference selection process that does not utilize TMS software, notwithstanding anything in this Agreement to the contrary, School, and not TMS, shall be liable for the compliance of such Delivery

Method preference selection process with applicable Requirements of Law, including, without limitation, 34 C.F.R. §§ 668.64(d)(4)(A)(1)-(6) and 668.64(d)(4)(B)(1)-(3). School shall transmit to TMS any Delivery Method preference that it obtains from a Student pursuant to its own Delivery Method preference selection process within one (1) Business Day of School's receipt of such Delivery Method preference; provided, however, that such Student may subsequently change his/her Delivery Method preference via the Student Portal subject to this Section 2.3(b).

2.4. Additional Card Method Requirements If School offers the Card Method, the provisions of this Section 2.4 are applicable to the Services offered in connection therewith.

(a) Prepaid Card Accounts. TMS represents, warrants, and covenants that:

(i) Students shall not incur any cost (A) for opening a Prepaid Card Account or initially receiving a Prepaid Card, (B) assessed by the Card Method Bank when conducting a point-of-sale transactions, for conducting a balance inquiry or withdrawal of funds at a domestic ATM that belongs to the surcharge-free regional or national network;

(ii) Prepaid Card Accounts are set up at the Card Method Bank to meet requirements for pass-through deposit insurance;

(iii) No credit shall be extended or associated with the Prepaid Card Account, and no fee shall be charged, for any withdrawal that exceeds the balance in the Prepaid Card Account; provided, however, that a transaction or a withdrawal that exceeds the balance in the Prepaid Card Account may be permitted only for an inadvertently authorized overdraft, so long as no fee is charged to the Student for such inadvertently authorized overdrafts; and

(iv) A Prepaid Card shall not be converted into a credit card.

(b) No Portrayal as a Credit Card Each Party represents, warrants, and covenants that it shall not market or portray a Prepaid Card as a credit card.

(c) Conditions Precedent. TMS shall not send a Prepaid Card to a Student unless and until (a) the terms and conditions have been made available to the Student either as required by Section 2.3(b)(v) of this Agreement or otherwise, (b) the Student has provided express written consent, which such consent may be electronic, to receiving such Prepaid Card, (c) to the extent that the Credit Balance includes Title IV HEA program funds, TMS has received written confirmation from School that the applicable Student is eligible for the type and amount of such funds included in the Credit Balance, which such written notice may be included in the Refund Transmission File.

(d) Convenient Access to ATM. School represents, warrants, and covenants that there are ATMs that are part of a surcharge-free, national or regional ATM network sufficient in number and housed and serviced such that Credit Balances are reasonably available to Students, including at the times that Prepaid Cards are issued.

(e) Transmission of Consumer Information Notwithstanding anything in this Agreement to the contrary, prior to a Student's selection of a Delivery Method, School shall not share with TMS for any purposes under this Agreement, any of such Student's nonpublic Consumer Information except:

(i) Directory information, as such term is defined in 34 C.F.R. § 99.3 and as such directory information is disclosed pursuant to 34 C.F.R. §§ 99.31(a)(11) and 99.37;

(ii) A unique student identifier generated by School that does not include a Social Security number in whole or in part;

(iii) A password, PIN code, or other shared secret that is used to identify the Student; and

(iv) As otherwise permitted by the Secretary.

TMS shall use such any Confidential Information transmitted under this Section 2.4(e) solely in connection with the Services, and shall not share such Confidential Information with any of its Personnel except in connection with the Services.

(f) Disclosure and Diligence Requirements

(i) Data and Diligence. Beginning no later than September 1, 2017, and then no later than sixty (60) days following the most recently completed Award Year thereafter, School shall (A) display conspicuously on its website and in a format established by the Secretary, (1) the total consideration for the most recently completed Award Year, monetary and non-monetary, paid to TMS under this Agreement, and (2) for any year in which thirty (30) or more Prepaid Card Accounts are opened by Students, the number of Students who had Prepaid Card Accounts at any time during the most recently completed Award Year, and the mean and median of the actual costs incurred by those account holders, (B) provide to the Secretary an up-to-date URL directed to the location of School's website that displays this Agreement pursuant to this Section 2.4(f) of this Agreement, and (C) ensure that the terms of the Prepaid Cards are not inconsistent with the best financial interests of the Students. TMS shall determine the figures required for disclosure under Section 2.6(e)(i)(A)(2) based on information provided to it by School. TMS shall not be liable for any inaccuracies in such figures based on School's failure to provide TMS with accurate information. To perform its obligations under Section 2.6(e)(i)(C), School shall conduct reasonable due diligence reviews at least every two (2) years to ascertain whether the fees imposed upon Students in connection with Prepaid Card Accounts are, considered as a whole, consistent with or below prevailing market rates. If (I) such due diligence review reveals that the fees imposed upon Students in connection with Prepaid Card Accounts are not, as a whole, consistent with or below prevailing market rates, or (II) if School receives material complaints from Students that (a) are documented by School in writing, and (b) it determines, in its good faith, sole commercially reasonable discretion, require termination of the Card Method to serve the best interests of Students, then School may cease offering the Card Method upon written notice to TMS, and TMS shall promptly remove the Card Method as an option set forth on the School Portal.

(ii) Disclosure of Agreement. The Parties acknowledge and agree that, by no later than September 1, 2016, and then no later than sixty (60) days following the most recently completed award year thereafter, School shall disclose this Agreement conspicuously on its website; provided, however, that School shall not disclose any provisions of this Agreement that each Party determines in its sole commercially reasonable and good faith discretion shall compromise its personal privacy, proprietary information technology, or the security of information technology or physical facilities. TMS shall provide School with written notice setting forth such provisions no later than thirty (30) days prior to the applicable required disclosure date as set forth in this Section 2.4(f)(ii).

2.5. Credit Balance Delivery Process. During the Term, TMS shall administer the Settlement Account, in connection with the designated trustee, at the Settlement Account Bank. When School wishes to remit a Credit Balance to a Student, School shall transfer the amount of the Credit Balance to the Settlement Account. At or around the time of such transfer, School shall send to TMS a Refund Transmission File via the School Portal containing (a) the names of all Students whose Credit Balances were transferred into the Settlement Account pursuant to the applicable transaction, (b) the amount of the Credit Balance due to each Student, and (c) any other information necessary for the Settlement Account Bank to complete delivery of the Credit Balance in accordance with the Student's or School's, as applicable, requested Delivery Method. Within one (1) Business Day of the date on which TMS has received the Refund Transmission File and confirmed Good Funds in the Settlement Account, TMS shall, as applicable, (i) in the case of the Card Method, cause the funding of the Student's Prepaid Card Account by instructing the Settlement Account Bank to transfer the amount of the Credit Balance from the

Settlement Account to the Card Method Bank via ACH or wire with instructions to the Card Method Bank to apply the funds to the Prepaid Card, (ii) in the case of the ACH Method, instruct the Settlement Account Bank to transfer the amount of the Credit Balance from the Settlement Account to the Student's bank account, using information provided by School to TMS or the Student via the Student Portal, as applicable, or (iii) in the case of the Check Method, instruct the Settlement Account Bank to print and mail to the Student at the address provided on the Student Portal, a check drawn on a controlled disbursement account funded by the Settlement Account. TMS shall not be liable for incorrect or fraudulent information provided by Student, including, but not limited to address and account information. School may submit a written request to TMS to stop a check, reverse an ACH transaction, or reverse Prepaid Card posting and TMS shall use commercially reasonable efforts to comply with School's request; provided, however, School acknowledges and agrees that recovery of funds may not be possible. In no event shall School remit Credit Balances to TMS.

2.6. Vendors. TMS may engage vendors to assist with aspects of the Services such as, for example and as applicable, Prepaid Card Account setup and Prepaid Card production (each, a "Vendor"). Prior to engaging any new Vendor, TMS shall perform an investigation and risk analysis consistent with its internal governance, risk, and compliance policies and shall use its commercially reasonable discretion when determining whether to proceed with such engagement following such investigation and risk analysis. TMS shall oversee and monitor the activities of any Vendor and shall ensure that each Vendor performs its responsibilities in compliance with this Agreement and Requirements of Law.

### **SECTION 3 FEES**

3.1. Fees. In consideration of the Services, TMS shall invoice School, and, except for fees subject to a good faith payment dispute between the Parties, School shall compensate TMS in accordance with the pricing schedule set forth on Exhibit A to this Agreement.

3.2. Invoicing. All fees shall be invoiced monthly to School by or on behalf of TMS for Services delivered during the immediately preceding month. Notwithstanding expiration or termination of this Agreement, payment in full of all fees incurred during the Term are due to TMS thirty (30) days from the date of the invoice, except for fees subject to good faith payment dispute as substantiated by written correspondence between the Parties. Fees not received by TMS by the due date set forth in the applicable invoice may be assessed a late fee equal to one and one half percent (1.5%) of the overdue amount per month until such overdue amount is paid in full. If TMS has not received satisfaction in full of any outstanding balance ninety (90) days after the payment due date, TMS may terminate this Agreement in accordance with Section 11.2(b)(i) of this Agreement. Upon expiration or termination of this Agreement, as applicable, School shall remain liable for payment of any and all (a) fees incurred for Services provided prior to the effective expiration or terminate date of this Agreement, as applicable, and (b) Early Termination Fees, as applicable, except for those fees subject to a good faith payment dispute as substantiated by correspondence between the Parties.

3.3. Early Termination Fees. TMS may charge School a fee for terminating this Agreement without cause prior to the end of the Term (an "Early Termination Fee"). The Early Termination Fee shall equal the number of full years plus full twelfths remaining in the Initial Term, or Renewal Term, as applicable, (b) multiplied by the aggregate dollar amount of fees incurred by School under Section V.A of this Agreement during the three (c) months of the Initial Term or Renewal Term, as applicable, that School incurred the greatest dollar amount of such fees.

3.4. Fees to Students. The Pricing Schedule shall set forth any cardholder fees incurred by Students in connection with Prepaid Card Accounts.



## SECTION 4 COMPLIANCE

4.1. General. Each Party shall comply with all Requirements of Law applicable to its respective obligations under this Agreement including, but not limited to, Requirements of Law under the HEA. Notwithstanding anything in this Agreement to the contrary, if an action that a Party is required to take under this Agreement would, on the advice of such Party's legal counsel, violate any Requirements of Law, such Party shall not be required to take such action, and its failure to do so shall not constitute a breach of any provision of this Agreement; provided however, that such Party shall, to the extent permitted by Requirements of Law, notify the other Party in writing of its refusal to take the applicable action pursuant to this Section 4.1 within a commercially reasonable timeframe. If, due to Requirements of Law and on the advice of its legal counsel, TMS is unable to further provide the Services or a feature of the Services, TMS may immediately cease providing such Service or feature of a Service, as applicable, upon written notice to School. If the applicable Requirement(s) of Law materially impacts TMS's ability to provide the Services as set forth in this Agreement, then either Party may terminate this Agreement without penalty pursuant to Section 11.2(b)(ii) of this Agreement.

4.2. Higher Education Act. In providing the Services, TMS shall:

(a) Comply with (i) all applicable statutory provisions of or applicable to Title IV of the HEA, (ii) all regulatory provisions prescribed under that statutory authority, and (iii) all special arrangements, agreements, limitations, suspensions, and terminations entered into under the authority of statutes applicable to Title IV of the HEA;

(b) Refer to the Office of Inspector General of the Department of Education for investigation any information indicating there is reasonable cause to believe that School might have engaged in fraud or other criminal misconduct in connection with Schools administration of any Title IV, HEA program or an applicant for Title IV, HEA program assistance might have engaged in fraud or other criminal misconduct in connection with his or her application. Examples of the type of information that must be referred include:

(i) False claims by the institution for Title IV, HEA program assistance;

(ii) False claims of independent student status;

(iii) False claims of citizenship;

(iv) Use of false identities;

(v) Forgery of signatures or certifications;

(vi) False statements of income; and

(vii) Payment of any commission, bonus, or other incentive payment based in any part, directly or indirectly, upon success in securing enrollments or the award of financial aid to any person or entity engaged in any student recruitment or admission activity or in making decisions regarding the award of Title IV, HEA program funds;

(c) Be jointly and severally liable with School to the Secretary for the for any violation by the servicer of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, and any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA;

(d) If TMS or School terminates this Agreement, or if TMS goes out of business, or files a petition under the Bankruptcy Code, return to School all records in TMS's possession pertaining to School's participation in the Title IV HEA program, subject to Section 7.4 of this Agreement. The Parties acknowledge and agree that TMS shall not receive any funds, including Title IV HEA program funds, in connection with any HEA Service.

4.3. Family Educational Rights to Privacy Act Pursuant to the Family Educational Rights to Privacy Act of 1974 and its corresponding regulations, 20 U.S.C. § 1232g, *et seq.*, 34 C.F.R. Part 99 (collectively, "FERPA"), no part of any Education Record that meets the requirements set forth in 34 C.F.R. § 99.30 shall be shared with any third party without proper consent from Student. School shall be responsible for obtaining this consent and communicating any revocation to TMS in writing. Except as otherwise set forth in this Agreement, School may share with TMS information from an Education Record without obtaining consent in a manner consistent with 34 C.F.R. § 99.31(a)(1)(i)(B).

**SECTION 5**  
**REPRESENTATIONS, WARRANTIES, AND COVENANTS**

5.1 Mutual Representations, Warranties, and Covenants Each Party hereby represents, warranties, and covenants that:

(a) Authorization. Execution, delivery and performance of this Agreement are within the Party's power and authority, have been authorized by proper proceedings, and each Party has taken all necessary action to enter into this Agreement, to consummate the transactions contemplated hereby, and to perform its obligations hereunder. This Agreement has been duly executed and delivered and is a legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, rearrangement, reorganization or similar debtor relief legislation affecting the rights of creditors generally from time to time in effect and by general principles of equity (regardless of whether such enforcement is sought in a proceeding at law or in equity) and the discretion of the court before which any proceeding therefore may be brought.

(b) Consents and Approvals. It has obtained any and all consents, approvals or authorizations of, and made any and all declarations, filings or registrations with, any governmental authority, or any other person or entity, including any applicable licenses, required to be obtained or made by it in order to execute, deliver and perform its obligations under this Agreement or consummate the transactions contemplated hereby, except where the failure to do so would not have a material adverse effect on its business or financial condition or its ability to consummate the transactions contemplated hereby.

(c) Litigation. There is no action, order, writ, injunction, judgment or decree outstanding or claim, suit, litigation, proceeding, labor dispute, arbitral action or investigation pending, or to its actual knowledge threatened, against or relating to it that would have a material adverse effect on this Agreement or on its ability to consummate the transactions contemplated hereby.

(d) Absence of Conflicts. Neither its execution and delivery of this Agreement nor its performance of its obligations hereunder shall result in (a) a violation of its articles of incorporation, charter documents or bylaws or other governing document, as applicable (b) a breach of, or a default under, any contract, agreement, instrument, lease, commitment, franchise, license, permit or authorization to which it is a party or by which it or its assets are bound, which breach or default would have a material adverse effect on its business or financial condition or its ability to consummate the transactions contemplated hereby, or (c) a violation by it of any Requirements of Law, which violation would have a material adverse effect on its business or financial condition, or on its ability to consummate the transactions contemplated hereby or perform its obligations under this Agreement.

(e) Intellectual Property. Except for the rights granted to it under Section 6.2 of this Agreement, it owns, or has the right to use under valid and enforceable agreements, all Intellectual Property rights reasonably necessary for and related to its performance under this Agreement.

(f) Good Faith and Cooperation. It shall execute all of its obligations under this Agreement professionally and in good faith and shall cooperate with the other Party in order to carry out the terms and provisions of this Agreement during the Term. Each Party covenants that it shall agree to support the reasonable routine efforts of the other Party to work to resolve any disputes which may arise during the Term.

5.2 Additional Representations of School In addition to any other representations, warranties, and covenants made by it in this Agreement, School represents, warrants, and covenants that:

(a) It shall not disburse a Credit Balance to any individual that is not a Student at the time such Credit Balance is disbursed.

(b) All of the information that it transmits to TMS, including, without limitation and to the best of its knowledge, Consumer Information is accurate and complete.

(c) The amount of the Credit Balance transferred to a Student accurately reflects the amount of the Credit Balance due to such Student.

(d) It shall provide TMS with any and all information necessary that is reasonably required by TMS in order to carry out TMS's obligations under this Agreement.

(e) It shall not make any representation, oral, written, or otherwise, that it has remitted a Credit Balance directly to TMS.

## **SECTION 6 INTELLECTUAL PROPERTY**

### **6.1      General.**

(a) Each Party shall retain all right, title and interest in and to its intellectual property, including its Proprietary Information, systems, software, computer programs (including, but not limited to, in the case of TMS, the Student Account Center), processes, technology, services, methodologies, models, products, patents, copyrights, trademarks, service marks, and any other materials or rights, tangible or intangible (collectively, "Intellectual Property"). Except for the licenses granted in this Section 6, nothing shall, or shall be construed to, restrict, impair, transfer, license, convey or otherwise alter or deprive any of any of its rights or proprietary interests in its Intellectual Property, including, without limitation, any modifications, enhancements or derivative works thereof. Each Party shall use the other Party's Intellectual Property solely in the form and manner set forth in this Agreement, except with the prior written consent of such other Party.

(b) Except as otherwise provided herein, nothing contained in this Agreement shall be construed as granting to either Party (i) any right or license under the other Party's present or future patent rights or copyrights, or (ii) any right or license to use, for any purpose other than those purposes expressly stated in this Agreement, the other Party's information or any other information, materials or results received, discovered, or produced by such other Party in connection with its obligations under this Agreement.

**6.2      Grant of Licenses.** As of the Effective Date and thereafter during the Term, subject to the terms and conditions of this Agreement, (a) School grants to TMS a non-exclusive, non-transferable, royalty free, revocable license to use School's Intellectual Property solely in connection with the Services or as necessary for TMS to perform its obligations under this Agreement, and (b) TMS grants to School a non-exclusive, non-transferable, royalty free, revocable license to use TMS's Intellectual Property solely as necessary to access or utilize the Services. Neither Party shall use, transfer, assignment, lease, or sublicense, in whole or in part, any of the other Party's Intellectual Property without such other Party's prior written consent, except as otherwise set forth in this Agreement.

**6.3      Termination.** Upon expiration or termination of this Agreement, as applicable, all licenses granted by any Party to another Party shall immediately terminate without notice required, and each Party shall return the other Party's Intellectual Property and all copies or derivative works made thereof, as set forth in Section 7.4 of this Agreement. Thereafter, neither Party shall have any rights or licenses to use the other Party's Intellectual Property or any such copies or derivative works, except as specifically agreed between the Parties in writing.

## SECTION 7 CONFIDENTIALITY

7.1 Confidential Information. All information disclosed by a Party (the “Disclosing Party”) to the other Party or its Personnel (the “Receiving Party”), including without limitation all Intellectual Property, statistics, information concerning operations, sales information, and other such information as may be supplied by the Disclosing Party or its affiliates which is not generally ascertainable from public or published information (collectively, “Proprietary Information”), and all nonpublic personal information, as such term is defined in the Privacy Requirements, any part of any Education Record, End User Data, or any personally identifiable information or records in any form (oral, written, graphic, electronic, machine-readable or otherwise) of any individual who has submitted such information to the Disclosing Party or the Disclosing Party’s affiliates, including without limitation, the individual’s name, address, telephone number, e-mail address, payment or transactional account history, account balance, or the fact that the individual has a relationship with the Disclosing Party (collectively, “Consumer Information”), shall be presumed to be proprietary and confidential unless specifically identified in writing by the Disclosing Party. Together, the Consumer Information and the Proprietary Information shall be called the “Confidential Information.” For the sake of clarity, the Confidential Information of a Party shall include information provided to such Party by any third party or a Party’s Personnel to the extent such Party is obligated to hold such information in confidence.

7.2 Exceptions. “Confidential Information” shall not include any information that: (1) was already known to the Receiving Party prior to disclosure by the Disclosing Party without breach of any legal or contractual obligations of the Receiving Party, (2) is or becomes a matter of public knowledge through no breach of this Agreement or other wrongful act of the Receiving Party, (3) has been received by the Receiving Party from a third party and without breach of any obligation of confidentiality of such third party to the owner of the Confidential Information, (4) is independently developed by the Receiving Party without use of or reference to any of the Disclosing Party’s Confidential Information, which the Receiving Party can demonstrate by contemporaneous records, (5) has been approved for release, or (6) in the case of Consumer Information, was received by the Receiving Party by a third party outside the scope of, and unrelated to, this Agreement. Nothing in this Section 7 shall be construed to prohibit disclosure of any information, including, without limitation, Confidential Information, to a governmental authority authorized to receive such Confidential Information, regulatory agencies, rating agencies, attorneys, accountants, servicers, Vendors, to the extent permitted under this Agreement, and/or consultants of a Party, and/or the employees and agents of any of the foregoing, who have a duty or other binding obligation to respect the confidentiality thereof.

7.3 Ownership and Restrictions on Use. The Receiving Party acknowledges and agrees that, except to the extent otherwise expressly provided herein, the Confidential Information of the Disclosing Party shall remain the sole and exclusive property of the Disclosing Party, and the disclosure of such information to Receiving Party does not confer upon it any license, interest, or right of any kind in or to the Confidential Information. At all times and notwithstanding any expiration or termination of this Agreement, the Receiving Party agrees that it shall:

(a) Hold in strict confidence and not disclose to any third party the Confidential Information of the Disclosing Party, except as approved in writing by the Disclosing Party or as necessary to carry out its obligations under this Agreement;

(b) Only permit access to the Confidential Information of the Disclosing Party to those of the Receiving Party’s Personnel and other third parties who have a need to see it and/or use it, to the extent the applicable party is made aware of the confidentiality obligations covered in this Agreement;

(c) Be responsible to the Disclosing Party for any of its Personnel’s or other third party’s use and disclosure of the Confidential Information provided to its Personnel or such third party by the Receiving Party;

(d) Only use Confidential Information that it receives to carry out the purposes of this Agreement and for no other purpose whatsoever, except with the prior written consent of the Disclosing Party;

(e) Use at least substantially the same degree of care it would use to protect its own Confidential Information of like importance, but in no event less than a commercially reasonable degree of care, including, without limitation, maintaining information security standards for such Confidential Information as are commercially reasonable and customary for the type of information. Specifically, with regard to Consumer Information, TMS shall comply with the information security standards specific to such Consumer Information set forth in this Agreement.

(f) With regard to TMS, except with the prior written consent of School, not perform Services or access School's Confidential Information, nor shall it permit any of its Personnel to perform Services or access School's Confidential Information from a location outside of the United States of America;

(g) Keep all physical documents and any other material containing or incorporating any of the Confidential Information at the usual places of business of the Receiving Party, and all electronic data where such data is typically warehoused; and

(h) Make copies of the Confidential Information only to the extent required for the purposes of this Agreement.

7.4 Return of Information. Upon the earlier of the written request of the Disclosing Party or when no longer needed by the Receiving Party for fulfillment of its obligations under this Agreement, and to the extent permitted by Requirements of Law, the Receiving Party shall either: (1) promptly return to the Disclosing Party all documents and other tangible (including, without limitation, electronic) materials containing the Confidential Information disclosed by the Disclosing Party, and all copies thereof in its possession or control, or (2) erase or destroy all such materials. Notwithstanding the foregoing, the Receiving Party shall be permitted to retain a copy of Confidential Information disclosed by the Disclosing Party for audit and/or compliance and evidentiary purposes or to the extent necessary to comply with any law or regulation or the Receiving Party's document retention policies, provided that the Confidential Information is kept confidential in accordance with this Agreement. The Receiving Party shall not be required to return, destroy or delete Confidential Information disclosed by the Disclosing Party which has been backed up pursuant to the Receiving Party's electronic data retention policies and which incorporates Confidential Information disclosed by the Disclosing Party, provided that such Confidential Information is kept confidential in accordance with this Agreement. Notwithstanding the expiration or termination of this Agreement, as applicable, or the destruction of Confidential Information pursuant to this Section 7.4, the Receiving Party shall continue to be bound by its obligations of confidentiality.

7.5 Applicable Law. Each of the Disclosing Party and Receiving Party shall comply with (a) Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*; (b) federal regulations implementing such act and codified at 12 C.F.R. Parts 40, 216, 332, and 573; (c) Interagency Guidelines Establishing Standards For Safeguarding Customer Information and codified at 12 C.F.R. Parts 30, 208, 211, 225, 263, 308, 364, 568, and 570; (d) FERPA, (e) the HEA, and (f) other applicable Requirements of Law (the "Privacy Requirements") relating to the privacy and security of Consumer Information when disclosing, accessing, using, reusing, and/or transmitting any Consumer Information and at all relevant times. The Receiving Party shall not use or transmit any Consumer Data beyond the purpose for which it received the data pursuant to this Agreement.

**SECTION 8  
CONSENT BY SCHOOL**

8.1 Consent By School. School grants TMS permission to (a) name School as an existing client in any TMS marketing materials or press release during the Term, and (b) provide School with information regarding new TMS products or services and/or enhancements to its existing products and services. These communications may be sent via email, web links, direct mail or other forms of communication.

**SECTION 9  
INDEMNIFICATION**

9.1 Mutual General Indemnity. Subject to the limitations in Sections 9.2 of this Agreement and the conditions set forth in Section 9.3 of this Agreement, each Indemnifying Party shall indemnify, defend, and hold the applicable Indemnified Parties harmless from and against any and all claims (including, without limitation, any and all third party claims against such Indemnified Party and damages resulting therefrom), judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses including, without limitation, reasonable and documented attorneys' fees (collectively, "Losses"), incurred by such Indemnified Parties that arise out of or relate to the Indemnifying Party's obligations under this Agreement; provided however, that except in the case of an Indemnifying Party's gross negligence, willful misconduct, or fraud, no Indemnified Party shall be entitled to indemnification under this Section 9 to the extent that such breach or failure occurred as a result of or in connection with the gross negligence, willful misconduct or fraud of an Indemnified Party, any failure of any representation or warranty made by an Indemnified Party in or pursuant to this Agreement to be true and correct, the non-fulfillment or non-performance of any covenant, obligation, or other agreement of an Indemnified Party contained in this Agreement, or the failure by an Indemnified Party to comply with Requirements of Law in accordance with the terms of this Agreement. For the avoidance of doubt, and without in any way limiting the foregoing, an Indemnifying Party shall reimburse each Indemnified Party for all costs incurred by them resulting from third party investigation of the acts and practices of the Indemnifying Party, its subsidiaries, and/or Affiliates, including, without limitation, expenses related to compliance with any third party subpoena or with any other discovery proceeding.

9.2 Limitations of Indemnity.

(a) No Indirect Losses. Except in the case of an Indemnifying Party's gross negligence, willful misconduct, or fraud, in no event shall an Indemnifying Party be liable under this Agreement for any indirect, incidental, special, consequential, or exemplary or punitive damages (or any comparable category or form of such damages, howsoever characterized in any jurisdiction), regardless of the form of action, whether in contract, tort, strict liability or otherwise, and even if foreseeable or if the Indemnified Party has been advised of the possibility of such damages.

(b) Limitation on Direct Losses. EXCEPT FOR LOSSES ARISING OUT OF TMS'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, TMS'S TOTAL LIABILITY FOR ANY DAMAGES ARISING OUT OF A SERVICE, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY TMS'S NEGLIGENCE IN AN AMOUNT NOT TO EXCEED GREATER OF (i) US \$500,000, OR (ii) THE PRICE PAID BY SCHOOL TO TMS UNDER SECTION 3 OF THIS AGREEMENT (FEES) IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM.

(c) Statute of Limitations. The rights and obligations of the Parties under this Section 9 shall survive for eighteen (18) months following expiration or termination of this Agreement.

9.3 Indemnity Procedures. When seeking indemnification under this Agreement, the Indemnified Party will promptly notify the Indemnifying Party in writing of any claims or Losses subject to indemnity. Any delay in notice to the Indemnifying Party will relieve the Indemnifying Party of its defense and indemnity obligations only to the extent of any prejudice of the defense of the Losses. Within fifteen (15) days following receipt of written notice from an Indemnified Party, but no later than ten (10) days before the date on which any response to a complaint or summons is due, the Indemnifying Party will notify the Indemnified Party in writing (a) acknowledging its indemnification obligation and assuming control of the defense and settlement of the claims or Losses (a “Notice of Election”) or (b) of its good faith dispute of liability, which such dispute shall be resolved in accordance with Section 10 of this Agreement. If the Indemnifying Party delivers a Notice of Election, the Indemnifying Party will have the sole right to conduct the defense of any claims or Losses and all negotiations for compromise or settlement, except that: (i) the Indemnifying Party will not enter into any compromise or settlement that will have the effect of constituting an admission of liability by the Indemnified Party, or creating any liability or obligation (whether legal or equitable) on the Indemnified Party’s part, without the prior written consent of the Indemnified Party, (ii) no compromise or settlement is authorized unless the Indemnified Party is completely released of liability under the compromise or settlement, and (iii) the Indemnified Party will be entitled to obtain counsel at its own expense and assist in the handling of any claim. Any counsel selected by the Indemnifying Party to defend the Indemnified Party will be subject to the reasonable approval of the Indemnified Party. If the Indemnifying Party, after receiving notice of any Losses, fails to deliver a Notice of Election within the timeframe set forth herein or otherwise fails to acknowledge its obligation of indemnification, the Indemnified Party may (without further notice to the Indemnifying Party) retain counsel and undertake the defense, compromise or settlement of the Losses. The Indemnifying Party will promptly reimburse the Indemnified Party for all costs and expenses incurred in defending against the Losses, including the payment of any final, non-appealable judgment or award or the costs of compromise or settlement of the Losses.

9.4 Exclusive Remedies. EXCEPT IN CONNECTION WITH (1) THE OTHER PARTY’S FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, (2) THE OTHER PARTY’S BREACH OF ITS OBLIGATIONS UNDER SECTION 6 (INTELLECTUAL PROPERTY) OR SECTION 7 (CONFIDENTIALITY) OF THIS AGREEMENT, (3) A PARTY’S EXERCISE OF EQUITABLE REMEDIES AVAILABLE TO IT, OR (4) AS OTHERWISE SET FORTH IN SECTION 3.3 (EARLY TERMINATION FEES) OF THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT THE INDEMNIFICATION OBLIGATIONS OF A PARTY SET FORTH IN THIS SECTION 10 CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES OF A PARTY AGAINST THE OTHER PARTY IN RESPECT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF.

## **SECTION 10 DISPUTE RESOLUTION**

10.1 In the event of any dispute arising in connection with the interpretation of this Agreement, the performance of either Party under this Agreement, or otherwise relating to this Agreement, the Parties shall engage in good faith discussions to resolve such dispute for ten (10) Business Days from the first date on which a Party notified the other Party in writing of such dispute. If such dispute is not resolved within ten (10) Business Days, the Parties shall resolve the dispute by litigation in an appropriate court of competent jurisdiction.



## SECTION 11 TERM AND TERMINATION

11.1 Term. This Agreement shall commence on the Effective Date and shall continue through November 30, 2017 (the “Initial Term”), unless earlier terminated pursuant to the provisions of this Section 11. Thereafter, subject to this Section 11, this Agreement shall automatically renew for successive one (1) year periods (each, a “Renewal Term”) unless terminated by any Party by written notice of non-renewal to the other Party given to the non-terminating Party at least ninety (90) days prior to the end of the Initial Term or then current Renewal Term, as applicable. School acknowledges and agrees that TMS may adjust the fees charged for a Service during a Renewal Term prior to the start of such Renewal Term; provided, however, that TMS shall provide School with any such changes at least one hundred twenty (120) days prior to the start of such Renewal Term.

### 11.2 Termination.

(a) Notification. Termination under Section 11.2(b) of this Agreement shall be effective immediately, subject to any applicable cure period set forth in this Agreement, by delivery of a written notice of termination to the affected Party.

(b) Termination for Cause. From and after the Effective Date:

(i) Breach. Either Party may terminate this Agreement immediately upon written notice to the other Party if the non-terminating Party fails to perform any of its obligations hereunder in any material respect, or shall breach any of its representations, warranties, or covenants in this Agreement in any material respect, and such failure or breach continues unremedied after the expiration of sixty (60) calendar days following written notice to the non-terminating Party specifying the nature of such failure or breach and stating the intention of the terminating Party to terminate this Agreement absent a cure of such failure or breach in all material respects within such sixty (60) calendar day period; provided however, that a Party may not terminate this Agreement under this Section 11.2(b)(i) to the extent that it is in breach in any material respect of any of its representations, warranties, or covenants, and/or is failing to perform any of its obligations under this Agreement in any material respect at the time of such written notice of termination or during any subsequent cure period.

(ii) Requirements of Law. Either Party may terminate a Service immediately upon written notice to the other Party if, in the reasonable determination of its legal counsel, TMS is unable to further provide such Service or a feature of such Service due to a Requirement(s) of Law, as set forth in Section 4.1 of this Agreement, or if any governmental authority with authority over the terminating Party prohibits the terminating Party from performing any of its obligations under this Agreement in any material respect.

(iii) Force Majeure. If a Party is prevented from performing, or its performance of its obligations under this Agreement is rendered impracticable (such Party, the “Non-Performing Party”), for a period of at least five (5) Business Days during any two (2) week period as a result of delays or failures due to any cause beyond its control, howsoever arising, and not due to its own act or negligence and that cannot be overcome by the exercise of due diligence (each such cause, a “Force Majeure Event”), then the Non-Performing Party shall provide written notice to the other Parties of such Force Majeure Event and inability to perform (the “Force Majeure Event Notice”). Either Party may terminate this Agreement upon written notice to the other Party following the delivery of the Force Majeure Event Notice; provided, however, that if the Non-Performing Party regains its ability to perform hereunder within five (5) calendar days after the Force Majeure Event Notice was provided to the other Parties and the Non-Performing Party provides written notice of its ability to perform hereunder to the other Parties (the “Force Majeure Event Cure Notice”), then the terminating Party must deliver written notice of termination to the other Parties no later than thirty (30) calendar days after delivery of the Force Majeure Event Cure Notice.

11.3 Effect of Expiration or Termination. Except as otherwise provided in this Agreement and except as required by Requirements of Law, immediately upon expiration or termination of this Agreement, as applicable, (a) except for any amount subject to a good faith payment dispute as documented in writing by a Party to the other Party, each Party shall pay any amounts that it owes the other Party which are then due and outstanding under this Agreement, including, without limitation, any Early Termination Fees owed by School to TMS, (b) all rights and licenses granted hereunder, and all obligations and covenants imposed hereunder, shall immediately cease, and (c) each Party shall cease using all Confidential Information, Marks and/or any other proprietary materials of the other Party then under its possession or control, (including, without limitation, all applicable features of or related to Services), and shall comply with the provisions of Section 7.4 of this Agreement. Neither expiration nor termination of this Agreement or a Service shall (i) discharge any payment obligations accrued as of the effective date of such expiration or termination, as applicable, even if such obligations are payable after the termination date, or (ii) entitle School to a refund of any amounts previously paid to TMS.

11.4 Transition Period. Notwithstanding anything in this Agreement to the contrary, beginning on the Business Day immediately following expiration or termination of this Agreement and ending on the earlier of (A) ninety (90) days following expiration or termination of this Agreement, or (B) the date on which all Credit Balances have been successfully delivered to the applicable Student and all checks delivered under the Check Method have been cashed (the "Transition Period"), TMS shall (I) perform the Services set forth in Section 2.5 of this Agreement related to the delivery of Credit Balances for Students who, as of the date of expiration or termination of this Agreement, as applicable, have selected a Delivery Method from the Student Portal, (II) provide School continued access to the School Portal and those Students who have already selected a Delivery Method from the Student Portal, access thereto, and (III) assist School with processing new Credit Balance deliveries for Students who did not successfully receive Credit Balances previously delivered under this Agreement, and/or who need such Credit Balances delivered via a different Delivery Method. TMS shall continue to invoice School, and School shall continue to pay TMS, in accordance with Section 3 of this Agreement, for Services performed during the Transition Period. Except for any amount subject to a good faith payment dispute as documented in writing by a Party to the other Party, each Party shall pay any amounts that it owes the other Party within thirty (30) days following the expiration of the Transition Period. Upon the conclusion of the Transition Period, TMS shall cease providing Services set forth in this Section 11.4, and each Party shall return or destroy the other Party's Confidential Information in accordance with Section 7.4 of this Agreement, except as otherwise set forth therein. Any provision of this Agreement that is necessary for either Party to perform its respective obligations under this Agreement during the Transition Period shall survive until the expiration or termination of the Termination Period, as applicable. TMS may, at its option, terminate the Transition Period prior to its expiration for any reason set forth in Section 11.2(b) of this Agreement and subject to the provisions set forth therein, as applicable.

11.5 Survival. Any and all provisions, promises, and warranties contained herein, which by their nature or effect are required or intended to be observed, kept or performed after expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and remain binding upon and for the benefit of the Parties.

**SECTION 12**  
**MISCELLAENOUS**

12.1 Notices. All notices, demands and other communications hereunder (each, a “Notice”) shall be in writing and shall be deemed to have been duly given and received by a Party (a) at the time delivered by hand, if personally delivered, provided that a written receipt is obtained from an authorized representative of the Party; (b) when receipt is acknowledged, if mailed by certified mail, postage prepaid, return receipt requested; (c) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next Business Day delivery; (d) when received, if delivered by hand, or (e) on the date sent if sent via electronic mail during normal business hours of the recipient during a Business Day, and otherwise on the next Business Day if sent after normal business hours of the recipient, as follows:

Notices to TMS:

Tuition Management Systems  
Attn.: Contracts Department  
171 Service Ave., Suite 200  
Warwick, RI 02886  
contracts@afford.com

Notices to School:

University of California  
Attn: William Cooper  
Office of the President  
1111 Franklin Street, 10th Floor  
Oakland, CA 94607-5200

Notwithstanding the foregoing, any written notice required under Section 9 of this Agreement (Indemnification) or Section 11 of this Agreement (Term and Termination) shall be sent via one of the methods set forth in Section 12.1(a) through (d), and a copy of any such written notice shall be sent to:

If to TMS:

The First Marblehead Corporation  
Corporate Law Department  
1 Cabot Road, Suite 200  
Medford, MA 02155

If to School:

University of California  
Attn: William Cooper  
Office of the President  
1111 Franklin Street, 10th Floor  
Oakland, CA 94607-5200

12.1 Relationship of the Parties. The Parties are independent contractors and this Agreement shall not establish any relationship of partnership, joint venture, employment, franchise, or agency between the

Parties. Neither Party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Neither Party shall represent itself as an agent, employee, legal representative, joint venturer, or partner of the other nor shall it assume or purport to create any obligation on behalf of the other.

12.2 Expenses. Except as is otherwise specifically provided in this Agreement, each Party shall pay its own costs and expenses in connection with carrying out its responsibilities under this Agreement, including all regulatory fees, attorneys' fees, fees for information security compliance, and other expenses.

12.3 Complete Agreement; Amendments. This Agreement, including all Exhibits attached hereto, (a) is the complete statement of the agreement of the Parties with regard to the subject matter hereof; and (b) may be modified only by a writing signed by both parties. This Agreement shall govern the delivery and performance of the Services. Except as expressly agreed in writing by the Parties, all other terms of any negotiation, or similar document, whether prior or following the Effective Date, including but not limited to any pre-printed terms thereon and any terms that are inconsistent, add to or conflict with this Agreement and/or an Exhibit, shall be null and void and of no legal force or effect. If on the Effective Date the Parties have any other agreement in effect governing TMS's provision of Services to School, this Agreement shall supersede such agreement solely to the extent such agreement relates to the Services and the Parties' rights and obligations contained in this Agreement.

12.4 Multiple Counterparts. This Agreement may be executed in multiple counterparts, including, without limitation, by facsimile and .pdf electronic transmission, each of which shall be deemed an original for all purposes and all of which shall be deemed, collectively, one agreement.

12.5 Waiver. No Party shall be deemed to have waived any of its rights, powers, or remedies under this Agreement unless such waiver is approved in writing by an authorized representative of the waiving Party. No delay or failure by either Party to exercise any right, power, or remedy hereunder shall constitute a waiver thereof by such Party, and no single or partial exercise by either Party of any right, power, or remedy shall preclude other or further exercise thereof or any exercise of any other rights, powers, or remedies.

12.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable requirements of law, but if any provision of this Agreement is held to be legally prohibited or invalid, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

12.7 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE THAT WOULD CAUSE THE APPLICATION OF LAWS OF ANY JURISDICTION OTHER THAN TO THOSE OF DELAWARE.

12.8 Drafting; Captions. Each Party acknowledges that its legal counsel participated in the drafting of this Agreement. The Parties hereby agree that the rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor any Party over the other. Further, the captions, headings and arrangements used in this Agreement are for convenience only and do not in any way affect, limit or amplify the terms and provisions hereof.

12.9 No Third Parties Benefitted. This Agreement is made and entered into for the protection and legal benefit of the Parties, and their permitted successors and assigns, and each and every Indemnified Party (all of which shall be entitled to enforce the indemnity contained herein), and no other person, shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

12.10 Permitted Filing. Each Party may file this Agreement (with redactions as permitted by Requirements of Law) with the appropriate state or federal regulators, including the Securities and Exchange Commission and the Department of Education, as required by such regulators.

12.11 Exclusivity. During the Term, School shall not directly or indirectly offer, promote, or endorse any financial product or service that is the same or similar to the Services without the prior written consent of TMS.

[Remainder of page intentionally left blank]

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

**FM Systems LLC**  
**d/b/a Tuition Management Systems**



By: \_\_\_\_\_  
Carl J. Firlings, Jr.  
Managing Director  
August 22, 2016

**University of California**

By: \_\_\_\_\_  
William M. Cooper  
Associate Vice President and  
Chief Procurement Officer  
Date: \_\_\_\_\_

**Exhibit A:****Institutional Fees**

<b>Refund and Disbursement Services</b>	<b>List Price</b>	<b>Discount</b>	<b>Net Price</b>
<b>Implementation and Customization (one-time fees)</b>			
cardholder website	\$600.00	100%	\$0.00
custom logo & color card, carrier and website	\$1,200.00	100%	\$0.00
custom full & color card, carrier and website	\$2,100.00		\$2,100.00
<b>Hosting and Maintenance</b>			
portal hosting fee (admin, preference, cardholder)	\$250.00 / mo		\$250.00 / mo
<b>Settlement Fees</b>			
ACH funds settlement	<i>no charge</i>		<i>no charge</i>
wire transfer settlement	\$50.00 / ea		\$50.00 / ea
<b>Issuance / Disbursement Fees</b>			
card issuance <sup>1</sup>	\$2.00 / ea		\$2.00 / ea
card load / disbursement <sup>1</sup>	\$1.00 / ea		\$1.00 / ea
ACH disbursement	\$0.30 / ea		\$0.30 / ea
check disbursement	\$3.00 / ea		\$3.00 / ea
<b>Notification Fees</b>			
refund notifications	<i>no charge</i>		<i>no charge</i>
adhoc notifications – email	\$0.05 / ea		\$0.05 / ea
adhoc notifications - SMS	\$0.15 / ea		\$0.15 / ea
<b>Exception / Misc Fees</b>			
returned student card	\$0.25 / ea		\$0.25 / ea
returned student ACH	\$5.00 / ea		\$5.00 / ea
returned student check	\$5.00 / ea		\$5.00 / ea
void/cancel check	\$2.00 / ea		\$2.00 / ea
stop payment - check	\$25.00 / ea		\$25.00 / ea
ACH/card reversal	\$30.00 / ea		\$30.00 / ea
<sup>1</sup> waived in consideration for electronic issuance/disbursement methods only			

<b>Professional Services</b>	<b>List Price</b>	<b>Discount</b>	<b>Net Price</b>
Custom development / support	\$200.00 / hr		\$200.00 / hr

## Fees For Cardholders

Prepaid Visa Fees	
Fee Type	Amount
<b>Initial and Service Fees</b>	
Activation	Included
Inactive Account Fee (assessed the following month after 12 months of consecutive inactivity)	\$3.00
<b>Get Cash</b>	
ATM Withdrawal – Domestic – AllPoint Network (No ATM operator surcharges at AllPoint locations)	Included
ATM Withdrawal – Domestic – Non AllPoint Network (ATM operator surcharges may apply)	\$2.00 <sup>1</sup>
ATM Withdrawal – International – AllPoint Network (No ATM operator surcharges at AllPoint locations)	Included
ATM Withdrawal – International – Non AllPoint Network (ATM operator surcharges may apply)	\$3.00 <sup>1</sup>
Over the Counter Bank Withdrawal	Included
<b>Spend Money</b>	
Signature Purchase Transaction	Included
PIN Purchase Transaction	Included
Foreign Currency Conversion	2.5%
<b>Load Money</b>	
Cash Loads (GreenDot or Western Union Reload)**	Included <sup>2</sup>
<b>Account Information</b>	
Mobile, Web, Automated Phone Support	Included <sup>2</sup>
ATM Balance Inquiry – AllPoint Network	Included
ATM Balance Inquiry – Non-AllPoint Network	\$0.50 <sup>1</sup>
Live Agent Support	Included
<b>Other Services</b>	
Card to Bank Transfer	Included
Card Replacement Fee	\$9.00
Express Delivery of Replacement Card	\$20.00
Bill Pay*	\$0.95
Bill Pay Exception Services (Proof of Payment or Stop Payment Request, Returned Payment)*	\$20.00
Consumer initiated Account Closure Fee	\$10.00
<sup>1</sup> ATM owner/operator fees/surcharges may apply	
<sup>2</sup> Third-party fees may apply	
*Feature is only available on General-Use Card upon ID verification	