



## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** by and between **Bastyr University** ("Institution") and **Nelnet Business Solutions, Inc.** and its affiliates ("Company") is entered into this 28th day of November, 2016, and shall be as follows:

1. **SERVICES AND SCOPE:** This Agreement sets forth general provisions under which the Company will provide services to the Institution and incorporates Terms and Conditions for selected services ordered by the Institution (Attachment A). These services represent an integrated and unique suite of business solutions that may be implemented individually but were designed to work in combination as a comprehensive business solution. The Institution may purchase and use any products offered by the Company during the term of this Agreement.
2. **ORDERING SERVICES:** Operational, transaction and other fees for services contracted as of the date of this Agreement are outlined on the Hosted Business Service Order Form (Attachment B). At any time, a completed Order Form for a service will be sufficient to incorporate that service into this Agreement under the service's most current Terms and Conditions (to be provided along with the Order Form). An Order Form must be accepted by the Institution in writing by signing and returning the Order Form.
3. **MULTIPLE CAMPUSES:** To the extent that the Institution is a public entity whose representatives have authority to sign multi-campus or multi-institution agreements, the terms of this Agreement, at the Company's option, may apply to any public campuses or institutions that wish to take advantage of the Company's services. Pursuant to the provisions above, a completed Order Form will be sufficient to incorporate services for those additional campuses or institutions into this Agreement.
4. **INSTITUTION BANKING INFORMATION:** The Institution must provide bank account information for the ACH (i.e., Automated Clearing House) deposit of its funds (and ACH withdrawal, if applicable). The Company requires a bank reference letter written on bank letterhead that includes the account holder name, the routing number, account number, and type of account (checking or savings). Additional procedures for debit block clearance may be appropriate and required for certain services.
5. **ACH AUTHORIZATION:** The Institution hereby authorizes the Company to initiate credit or debit entries to the account provided. The Institution acknowledges that the origination of ACH transactions for its account must comply with applicable U.S. laws and regulations. This authorization is to remain in full force and effect until the Company has received a written notice of termination or a change in banking from the Institution in such time and in such manner as to afford the Company a reasonable opportunity to act on it. As an Originator, the Institution is responsible for adhering to applicable rules as prescribed by the National Automated Clearing House Association (NACHA). The Institution shall establish and maintain procedures for secure online authentication (to identify End Users) and make reasonable efforts to prevent fraudulent use by End Users and unauthorized users. The Company may monitor and audit Institution and End User ACH activity, conduct risk assessments, set exposure limits, provide education, monitor return activity, make change requests, evaluate staff-initiated entries, and reject certain entries (e.g., physical check conversions). If necessary to comply with applicable laws, rules, or regulations, Company may revoke the Institution's privilege to originate ACH transactions. The Company assumes the responsibilities of a Third Party Sender under NACHA Rules. The Institution is liable for all returns, including untimely non-administrative returns.
6. **PAYMENT PROCESSING:** The Company will at all times maintain compliance with the most current applicable Payment Card Industry Data Security Standards (PCI DSS). Company acknowledges responsibility for the security of cardholder data under its control as defined within the PCI DSS. Company acknowledges and agrees that cardholder data may only be used for completing the contracted services as described in the full text of this document, or as required by the PCI DSS, or as required by applicable law.
7. **INDEPENDENT SERVICE CONTRACT:** Service levels, pricing, and packaging of any and all services provided under this Agreement are independent of any student-loan or student-loan-servicing relationship Nelnet, Inc. may have or seek to have with the Institution.
8. **REVENUE-SHARING RELATIONSHIPS:** The Institution is strongly encouraged to disclose to its customers any revenue-sharing relationship it has with the Company, if applicable. If such a relationship exists and the Institution chooses not to disclose it, the Institution will provide the Company with a written explanation of its policy. As noted above, any such relationship is independent of any student-loan relationship with Nelnet.
9. **CONFIDENTIAL BUSINESS INFORMATION:** During the term of this Agreement and for three (3) years after termination or expiration, each party agrees not to disclose Confidential Information obtained from the other party to any person or entity. As used herein, "Confidential Information" means information that is identified (orally or in writing) as confidential or is of such a nature that a reasonable person would understand such information to be confidential. Confidential Information shall not include information 1) generally known to the public, 2) already known, through legal means, to the party receiving the information, or 3) legally obtained from a third party. In the event that either party is required to disclose confidential information about the other party pursuant to a judicial or government order, such party will promptly notify the other party to allow intervention in response to such order.
10. **CONFIDENTIAL CONSUMER INFORMATION:** Consumer information that is required to be kept confidential will be kept so in perpetuity. Company will remain in compliance with security and privacy obligations imposed by the Gramm-Leach-Bliley Act (GLBA), FERPA, and other applicable laws or regulations; however, the Institution's sole remedy for recognition of noncompliance following a 15-day cure period is termination of this Agreement.



11. **INDEMNIFICATION:** Except as provided for herein, each Party (the "Indemnifying Party") shall indemnify, defend, and hold the other Party, its designees, and its respective Board of Trustees, officers, directors, employees and agents (collectively, "Indemnified Parties") harmless from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including reasonable attorneys' fees and costs incurred or suffered by any of the Indemnified Parties arising out of, in connection with or resulting from any claim or allegation arising from negligent or intentional conduct by the Indemnifying Party in the performance of this Agreement.
12. **FORCE MAJEURE:** The performance by either party of any obligations to be performed hereunder will be excused to the extent such performance is prevented by an act of God, war, terrorist attacks, insurrections, riots, labor disputes, including lockouts or boycotts, fire, explosion, flood, or other unforeseeable causes beyond the control and without fault or negligence of the party so affected. The party so affected will give prompt notice to the other party of such cause and take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as possible.
13. **LIMITATION OF LIABILITY:** TO THE FULLEST EXTENT PERMITTED BY LAW, BUT IN NO WAY LIMITING THE COMPANY'S OBLIGATION TO REMIT ALL FUNDS COLLECTED AND DUE TO THE INSTITUTION, THE LIABILITY OF EITHER PARTY WILL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE COMPANY'S NET REVENUE UNDER THIS AGREEMENT FOR THE PAST SIX MONTHS. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOSS OF DATA, LOST PROFITS, BUSINESS INTERRUPTION, OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT, OR SPECULATIVE DAMAGES ARISING FROM ANY CLAIM OR ACTION HEREUNDER WHETHER BASED IN CONTRACT, TORT, OR OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **WARRANTY:** THE COMPANY WARRANTS THAT SERVICES WILL BE PROVIDED IN A PROFESSIONAL MANNER IN ACCORDANCE WITH GENERALLY ACCEPTED INDUSTRY STANDARDS; OTHERWISE, ALL SOFTWARE, TOOLS, AND PROFESSIONAL SERVICES RENDERED BY THE COMPANY UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. THE COMPANY SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
15. **COMPLIANCE WITH STATE LAW; INDEMNIFICATION:** The Institution assumes all liability for conducting business in compliance with the laws, rules, and regulations ("Laws") of the state and locality in which it is located, including but not limited to Laws governing consumer protection. The Institution will indemnify and hold the Company harmless from and against any and all claims, liabilities, losses, damages, costs, and expenses, including reasonable attorney's fees, asserted against or incurred by the Company under state or local Laws as a result of the Company complying with any instruction or directive by the Institution.
16. **TERM, RENEWAL, AND TERMINATION:** This Agreement will be effective as of the signing date. The termination date of this Agreement will be five (5) years from the date of the first transaction processed by the Company on behalf of the Institution ("Commencement Date"). The Agreement will automatically renew every year thereafter unless either party cancels it in writing one hundred twenty (120) days in advance of the scheduled termination date. While this Agreement is in effect, the Institution agrees not to contract with any other provider of similar services that the Institution has requested from the Company pursuant to an Order Form.
17. **DEFAULT:** If the Institution fails to pay for services within thirty (30) days of an invoice date (if applicable), delinquent amounts will be subject to a late fee equal to the lesser of 1.5% per month or the maximum rate allowed under law. If not remedied within ninety (90) days of the invoice, the Company may, at its option, deduct overdue funds from the Institution's remittances. In the event that the Institution becomes ninety (90) days past due, the Company may also, at its option, terminate this Agreement.
18. **RELATIONSHIP:** Nothing contained herein is intended to create the relationship of a partnership, joint venture, or employer-employee. In performing this Agreement, the Company and its subcontractors will act as independent contractors and not as employees or representatives of the Institution. The Company will be solely responsible for and will promptly pay all federal, state, and municipal taxes, chargeable or assessed with respect to its employees and subcontractors, including but not limited to social security, unemployment, federal and state income tax withholding and other taxes and will hold the Institution harmless on account thereof.
19. **SEVERABILITY:** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless remain in full force and effect. The parties agree to negotiate in good faith a valid and enforceable substitute provision.
20. **HEADINGS:** The paragraph headings of this Agreement are for reference only and are not to be construed as terms.
21. **WAIVER:** Neither party's failure to exercise its rights hereunder will constitute or be deemed a waiver or forfeiture of such rights.
22. **ENTIRE AGREEMENT:** This Agreement, together with service-specific Terms and Conditions represents the entire agreement between the parties as to the matters set forth and supersedes all prior discussions or understandings between them. This Agreement may only be modified or amended in writing signed by authorized representatives of each party.
23. **BRANDING AND INTELLECTUAL PROPERTY:** Each party will retain its ownership and intellectual property rights with regard to its copyrights, trademarks, service marks, registered marks, patents, pending patents, trade secrets, and any other forms of intellectual property. Neither party will have any ownership interest in the intellectual property of the other party. In no way limiting the foregoing, Company grants Institution permission to display its logo during the term of this Agreement provided that the Institution agrees to use the most current logo supplied by the Company and to display such logo on its website in a position where users will reasonably be able to find it and use it to link to the Company's website.

**INSTITUTION INFORMATION**

14500 Juanita Drive NE  
Mailing Address  
Kenmore, WA 98028-4966  
City, State, ZIP

Federal Tax ID  
1,264 (NCES)  
Enrollment

**AUTHORIZED SIGNATURES**

**Bastyr University**

W. Glenn Ford 11-17-16  
Signature Date  
W. Glenn Ford  
Print Name  
VP for Finance & Admin.  
Title

**Nelnet Business Solutions, Inc.  
47-0751402**

Scott Spitzman 11/28/16  
Signature Date  
Scott Spitzman  
Print Name  
Chief Sales Officer  
Title

**Corporate Headquarters:**

Nelnet Business Solutions, Inc.  
121 South 13<sup>th</sup> Street, Suite 201  
Lincoln, NE 68508  
866.315.1263

DeeAnn K. Wenger, President  
[DeeAnn.Wenger@nelnet.net](mailto:DeeAnn.Wenger@nelnet.net)  
402.325.7241

## ATTACHMENT A

### HOSTED BUSINESS SERVICES TERMS AND CONDITIONS

#### 1. DEFINITIONS:

- a. **"Agreement"** means the Professional Services Agreement executed between the Institution and the Company (collectively, **"the Parties"**) which incorporates applicable Order Forms and Terms and Conditions.
- b. **"Change Requests"** are requests by the Institution to modify existing system features or their output. To meet Change Requests, NBS provides Professional Services at an hourly rate as quoted on the Change Request form.
- c. **"Confidential Information"** has the same meaning as set forth in the Agreement as well as all trade secrets, business and financial information, computer software, machine and operator instructions, business methods, procedures, know-how, and other information that relates to the business or technology of either party and is marked or identified as confidential, or disclosed in circumstances that would lead a reasonable person to believe such information is confidential. The Company's hosted system, applications, and all Documentation will be considered the Company's Confidential Information, notwithstanding any failure to mark or identify it as such.
- d. **"Documentation"** means user's manuals and other documentation made available to the Institution by the Company with respect to the system, but excludes any marketing or promotional materials.
- e. **"End User"** means each Institution employee, student, or an authorized third party who is permitted to access and/or use the Company's system and applications under the terms of this Agreement.
- f. **"ERP"** means an Institution's Student Information System (Enterprise Resource Planning software).
- g. **"Integration Connector"** means a series of instructions to post information to and/or from the Company's system and the ERP system.
- h. **"Intellectual Property Rights"** means any and all existing or future worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights, and other proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing.
- i. **"Institution Content"** means any data or content that is submitted by the Institution and collected and stored by the Company's system.
- j. **"New Feature"** means a major enhancement or service with significant new functionality, as determined by Company in its sole discretion and as listed on an Order Form. New Features may be "turned on" for an additional charge as agreed to by executing an additional Order Form.
- k. **"Order Form"** means that list of hosted business services and pricing, completed and executed by the Institution, which accompanies these Terms and Conditions and is incorporated into the Agreement between the Parties.
- l. **"Professional Services"** means services provided to the Institution by the Company which include, but are not limited to, analysis; Setup Services; software modifications; coding, implementation, installation, project management, system testing, acceptance testing support, or Institution training; and any other hourly services requested by the Institution.
- m. **"Refunds"** means a service for students and authorized third-parties (parents/guardians) to sign up online to have primarily financial aid refunds electronically deposited directly into students' or authorized third parties' checking or savings accounts, or loaded to an existing re-loadable prepaid debit card or disbursed via paper check.
- n. **"Setup Services"** means the standard initial services provided by the Company to set up and configure the system as specified in each fully executed Order Form in accordance with the Company's policies and procedures.
- o. **"Staff"** means those Institutional employees designated by the Institution to work with the Company in deploying and managing the system and hosted services.
- p. **"System"** means collectively the Company's campus commerce software and system, and such hosting, support, maintenance, installation, and Setup Services requested by the Institution pursuant to an executed Order Form and provided by the Company pursuant to the Agreement between the Parties and these Terms and Conditions. The System includes, without limitation, 1) any materials of the Company's licensors or contractors, 2) any modified, Upgraded, or enhanced versions of all code, and 3) all modifications and Upgrades that may become part of the System pursuant to this Agreement.
- q. **"System Site"** means the website provided by the Company to the Institution, accessed through the Institution's website, where End Users may access and use the System.
- r. **"Upgrade"** means a modified version of the system that contains patches, bug fixes, error corrections, enhancements, New Features, and other maintenance items. New Features may be "turned on" for an additional charge as agreed to by executing an additional Order Form.

#### 2. SERVICES:

- a. **Provision of Services by Company:** Subject to the terms and conditions of the Agreement and these Terms and Conditions, Company will use commercially reasonable efforts to provide the system to the Institution. In addition, Company will use commercially reasonable efforts to ensure that the system is accessible through the System Site over normal network connections, with the exception of downtime due to necessary maintenance and troubleshooting.
- b. **Support and Maintenance:** Subject to the Institution's timely payment of all applicable fees, Company will make Upgrades available for the system when and if made available for general release in Company's sole discretion. Company will provide telephone support services to Institution Staff during Company's regular business hours for system related questions. If Institution desires additional services, including, without limitation, training or customization services, Company may provide such services pursuant to its standard rates and terms for Professional Services. Provision of support and maintenance does NOT include major enhancements with significant new functionality or additional services, as determined by Company in its sole discretion ("New Features"). New Features must be purchased through a validly executed Order Form.
- c. **Professional Services:** Professional Services will be provided to the Institution only pursuant to the terms of an executed Order Form or Change Request form. Professional Services will be provided by the Company at its then applicable hourly rate.



3. **TITLE IV COMPLIANCE:** The Company will comply with all statutory provisions of or applicable to Title IV of the Higher Education Act (HEA), all regulatory provisions prescribed under that statutory authority, and all special arrangements, agreements, limitations, suspensions, and terminations entered into under the authority of statutes applicable to Title IV of the HEA.
- a. **Use of Funds:** The Company will use any funds that the Company administers under any Title IV program solely for the purposes specified and in accordance with that program.
  - b. **Report of Misconduct:** The Company will refer any information to the Office of Inspector General of the Department of Education for investigation if there is reasonable cause to believe that the Institution might have engaged in fraud or other criminal misconduct in connection with the Institution's administration of any Title IV program.
  - c. **Liability:** Notwithstanding any indemnification provisions of this Agreement, both parties are jointly and severally liable to the U.S. Secretary of Education for any violation by the Company of any statutory provision of or applicable to Title IV of the HEA.
  - d. **Audit:** The Company will undergo and submit an annual Title IV compliance audit.
  - e. **Return of Records, Funds:** The Company will return to the Institution all records and Title IV funds in the Company's possession pertaining to the Institution's participation in the program(s) if the Company or Institution terminates the contract, if the Company stops providing services for the administration of a Title IV program, or the Company files a petition under the Bankruptcy code (34 C.F.R. § 668.25(c)(5)).
4. **SUBSCRIPTION AND RESTRICTIONS:**
- a. **Subscription:** Subject to the terms and conditions of this Agreement (including, without limitation, the Institution's obligation to pay all applicable fees) and during the term of this Agreement, Company will provide to the Institution a non-exclusive, non-transferable subscription that enables End Users to access and use the system as made available to the Institution and such End Users through the System Site solely for the Institution's internal business purposes and solely in accordance with the Documentation.
  - b. **Restrictions:** Institution will not, and will not permit any End User or third party to: (a) modify, adapt, alter, translate, or create derivative works from the system or the Documentation; (b) merge the system with other software; (c) allow any third party access to or use of the system; (d) reverse engineer, decompile, disassemble, or otherwise attempt to alter or derive the source code for the system; (e) knowingly infringe on any of the Company's Intellectual Property Rights; or (f) otherwise use or copy the system or the Documentation except as expressly permitted under this Section 4 and including mutually agreed upon data integration efforts.
  - c. **Information Access:** The Institution will have access to the system. The Institution agrees not to disclose User IDs and Passwords to unauthorized personnel, and it will notify the Company immediately if an unauthorized person obtains access to them. The Institution will also notify the Company if a User ID and Password is no longer needed by a representative of the Institution.
  - d. **Appropriate Use:** Institution acknowledges that End Users must abide by the terms of the System Site, and Company reserves the right to deny access to the system to any End User who does not abide by such terms. End Users may use the system only for the purposes of viewing the status of refunds and creating and maintaining refunds payment profiles, viewing bills, submitting payments, and performing commerce-related activities, as applicable, for the sole benefit of the Institution. Use will be subject to any and all posted terms that are not inconsistent with terms herein. The Institution will ensure that the Institution, Staff, and End Users who use the system comply with all applicable laws and regulations and any written or electronic instructions for use.
  - e. **Scans:** If Institution deems it necessary to perform security scans or other similar tests, the Institution must comply with the following mandatory requirements: (1) provide one week's notice of intent to test; (2) coordinate testing with Company staff; (3) perform testing only during non-peak non-daytime hours; and (4) compensate Company the greater of \$2,500 or the Company's then-applicable Professional Services rate per staff hour.
5. **PAYMENT TERMS:**
- a. **Operational Fees:** Operational fees (which may include hosting, maintenance, and transactional charges) for the system will be invoiced on a monthly basis. The first applicable billing date for Operational Fees will be the Commencement Date.
  - b. **Setup Services:** Fifty percent (50%) of the Setup Services fee for the initial deployment or subsequent enhancements (if applicable) will be invoiced and presented with each Order Form. The Institution must pay the Setup invoice in order to engage a system Project Manager. All other invoices are due within thirty (30) days of receipt.
  - c. **Professional Services:** Professional Services will be provided at the Company's then-applicable hourly rate.
  - d. **Taxes:** The Institution is responsible for all taxes associated with the services described herein, excluding taxes for the Company's income.
  - e. **Third-Party Changes:** The Company may adjust its fees or procedures as a result of changes in pricing or procedures by any third-party provider of a product or service used by the Institution. Such new prices or procedures will be applicable to the Institution as of the effective date established by the third-party provider, or as of any later date specified in the Company's notice to the Institution.
  - f. **Company Pricing Changes:** Operational, transaction and other fees are stated in an Order Form. They may be adjusted after one (1) year from the Commencement Date by 5% per year. In addition to and independent of this 5% potential fee increase, the Company reserves the right to increase fees at any time and in any amount necessary to offset the cost of rising postal rates associated with the refunds process.
  - g. **Early Termination:** If the Institution terminates this Agreement, an early termination fee will apply if the system has been implemented. The fee is equal to eighty percent (80%) of the average monthly revenue of the highest three months over the most recent twelve-month period multiplied by the number of months remaining on the current Agreement term. The fee will be charged to the Institution as a lump sum payable in thirty (30) days.
6. **INSTITUTION RESPONSIBILITIES:**
- a. **Staff Participation:** Timely Staff participation is required for requirements gathering, system configuration, deployment, testing and training in accordance with the scheduled timeline for delivery.

- b. **Marketing:** The Institution will publicize the availability of the system, without limitation, through the Institution's website to the Institution's End Users.
  - c. **Commencement:** The Institution will make the system available to End Users through the Institution's website beginning on the Commencement Date.
  - d. **Acceptance Testing:** The Institution will, with the Company's assistance, have the right to verify the operation of the system in accordance with Company documentation. The Acceptance Testing Period will be a time period not to exceed ten (10) business days from the date of delivery to determine whether the system materially conforms to the Company documentation. Notwithstanding the foregoing, if the system materially conforms to the Company documentation, based upon the reasonable judgment of pass or fail, or if no notification is given to the Company during the ten (10) business day Acceptance Testing Period or subsequent Acceptance Testing Periods, the system will be deemed accepted. The Acceptance Date will be the date that the Institution determines that the system satisfactorily complies with the Documentation, or the date acceptance occurs, whichever comes first. If the system fails to materially conform to Company documentation, the Institution will notify the Company of such failure in writing within the ten (10) business day Acceptance Testing Period. The Company will have twenty (20) business days after receipt of such notice to use its reasonable commercial efforts to correct, modify, or improve the system to conform to the Company documentation. Thereafter, the Institution will have a subsequent Acceptance Testing Period of five (5) business days from the date of redelivery in which to re-conduct its Acceptance Testing. This process will be repeated as necessary until the system is deemed to be accepted hereunder.
  - e. **Technical Support:** The Institution will provide adequate technical support to the Company, its licensors, and contractors for the deployment of the system into the Institution website and assist the Company, its licensors, and contractors in the identification and resolution of service problems. In some circumstances, the Institution may have to program its ERP to work properly with the Company's Integration Connectors.
  - f. **Dependencies:** The Institution will provide all necessary information and assistance to the Company to provide the system and Professional Services. The Institution understands and acknowledges that the Company's ability to provide the system and Professional Services will depend on various assumptions, dependencies, and prerequisites, as well as the completion of certain tasks or schedules by the Institution, the Institution's agents, or third parties that are outside of the Company's control; therefore, the Company's inability to perform, due to such matters, will not be deemed a breach of this Agreement by the Company and its duties hereunder will be mitigated to such extent.
  - g. **Backups:** The Institution agrees that it will be the Institution's responsibility to maintain duplicate copies of all original data and information and agrees that the Company will not be responsible or liable for any loss or destruction thereof during the course of rendering system services, unless loss or destruction of any such data is caused by the intentional misconduct of the Company. The Company may archive data (or cause its agents or contractors to archive data), if and to the extent that the Company, in its sole discretion, deems appropriate in connection with this Agreement.
  - h. **Termination and Integration Connectors:** The Institution will maintain as Confidential Information any system integration technology developed and deployed pursuant to this Agreement.
7. **OWNERSHIP:** All rights, title, and interest in and to the system (and its related software, tools, integration connectors, Institution modifications through Professional Services, and other technology, or portions thereof) and the copyright, patent, trademark, trade secret, and all other proprietary rights therein, and any derivative works created from them, will inure to the sole and exclusive benefit of the Company, its licensors, and contractors (as designated by the Company) from the date of conception, creation or fixation of any of the foregoing in a tangible medium of expression. The Institution expressly acknowledges that it will acquire no rights or interest therein. The Institution hereby assigns, and will assign, to the Company, its licensors, and contractors (as designated by the Company) all rights, title, and interest of the Institution, if any, in and to all of the foregoing. All rights not expressly granted under this Agreement are reserved by the Company. The Institution acknowledges that it may develop and disclose to the Company certain ideas, know-how, and forms of expression concerning or related to the system provided hereunder including derivative works (collectively "Developments"). To the extent that the Institution has any ownership interest in such Developments, the Institution hereby grants to the Company a perpetual, nonexclusive, royalty-free license to use such Developments in connection with the system and generally in connection with the operation of the Company's business.
8. **CONTENT WARRANTY:** Institution will be solely responsible for providing all Institution Content. "Institution Content" means any data or content that is submitted by the Institution and collected and stored by the Company's system. Institution will be solely responsible for ensuring the appropriateness of any data provided by End Users at the request of the Institution (for example, on a form created by the Institution, if applicable). Institution grants to Company all necessary proprietary rights and licenses in and to Institution Content solely as necessary for Company to provide the Services for Institution. Institution will not provide content that: (a) infringes or violates any intellectual property rights, publicity/privacy rights, law or regulation; (b) contains any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or personal information; or (c) is materially false, misleading or inaccurate. Institution will not request data from End Users: (a) the storage of which would violate applicable laws and regulations; (b) that exposes the Company to risk of breach and/or breach notification; or (c) that Institution would not readily store unencrypted on its own servers. Company may take remedial action if content violates this Section 8; however, Company is under no obligation to review content or data for accuracy or potential liability. Institution will defend, indemnify and hold harmless Company from any and all losses, costs, damages, liabilities or expenses (including without limitation reasonable attorneys' fees) incurred or arising from any claim by a third party arising out of the content or data.
9. **RISK:** The Institution understands that the system will not be uninterrupted or error free. The Institution agrees that it will be responsible for notifying its End Users of the need for End Users to maintain the confidentiality of user identifications and passwords, if applicable, as well as the risks inherent in using the Internet as a medium for the transport of information, including personal or confidential information. The Institution will utilize procedures to minimize any consequences of the failure of or errors resulting from the use of the system, including without limitation, maintaining a current backup of all related file data that has been delivered to the Institution.



10. **DISCLAIMER:** THE INSTITUTION ACKNOWLEDGES THAT PERIODIC UNAVAILABILITY OF THE SYSTEM DUE TO MAINTENANCE, BACKUP, AND UNAVAILABILITY OF HOSTING FACILITIES, TELECOMMUNICATIONS FAILURES OR OTHER CAUSES BEYOND ITS CONTROL WILL NOT CONSTITUTE A BREACH OF THIS AGREEMENT.
11. **ACH PROCESSING:** To provide the Company with the funds to be refunded, the Institution must designate a demand deposit account ("Account") at a bank located in the United States ("Bank") that participates in the ACH network. The Institution must also provide the Company the required information about the Account and the Bank, and must notify the Bank that the Company is exempted from any and all debit blocks. See the Refund Process below, if applicable, for additional information about debit blocks and ACH processing.
12. **REFUND PROCESS:** The Institution can select from three refund options, individually or in any combination:
- ACH Direct Deposit
  - Paper Check
  - ACH Direct Deposit to a Re-loadable Prepaid Debit Card

The Institution may elect to have existing payee disbursement candidate ACH payment profiles moved from Institution's current refunds management solution to the Company's system, if applicable. Institution's existing payee disbursement candidate ACH payment profiles may only be uploaded to Company's system once. The Company will assess the Institution a fee for this service, as stated in an Order Form.

The Institution and the Company agree to comply with all applicable regulations, including Title IV program requirements, as well as the procedures below. The Institution acknowledges that the Company has no control over the actual availability of funds, which is determined by the payee's bank or prepaid debit card provider:

- a. **Institution Obligations:** The Institution will:
- i. Establish and manage a process whereby payee disbursement candidates can opt out of the transfer of their ACH payment profile to the Company's system;
  - ii. Collect and maintain appropriate documentation of the opt-out process for seven (7) years, making the information readily available in the event of an audit review request;
  - iii. Ensure the accuracy of payee disbursement candidate ACH payment profile information;
  - iv. Format payee disbursement candidate ACH payment profile data and the file for transmission according to Company specifications;
  - v. Establish the capacity to encrypt and transmit payee disbursement candidate ACH payment profiles via Secure FTP (SFTP) or other supported secure transport protocol;
  - vi. Forward a single file of payee disbursement candidate ACH payment profiles to the Company for upload to the System, if applicable;
  - vii. Ensure the accuracy of all refund data provided to the Company, including but not limited to ensuring the accuracy of any refunds file and preventing any duplicate refund data from being submitted to the Company (including duplicate files);
  - viii. Forward payee disbursement candidate files to the Company with sufficient lead time so as to meet Title IV deadlines, where applicable; the Institution is solely responsible for timely delivery of candidate files;
  - ix. Educate students regarding the various refunds method(s) offered by the Institution;
  - x. Make available sufficient funds to process the refunds by debit-block-free ACH transaction to Institution's bank account;
    1. If an ACH debit transaction is rejected by Institution's bank for any reason, the Institution agrees to wire said funds to the Company by noon Central time on the date notified by the Company; if the Institution fails to wire the necessary funds by noon Central time, the Company may recall the original refund transaction file(s).
    2. In no way limiting the above, if an ACH debit transaction fails due to a debit block, hourly fees at the then-applicable Professional Services rate will apply as the Company makes adjustments and reconciles funds due to such failure.
    3. If the Institution fails to remove the debit block within 48 hours, in addition to recalling the original refund transaction file(s), the Company may suspend all further refund activity until the debit block is removed.
  - xi. Establish the capacity to encrypt and transmit disbursement candidate files via Secure FTP (SFTP) or other supported secure transport protocol;
  - xii. Develop appropriate and applicable customer service scripts (e.g., FAQs) to deliver customer service as necessary based on program offerings;
  - xiii. Provide Staff as required to develop desired integration functionality;
  - xiv. For paper checks, cooperate with Company to promptly process aged outstanding checks;
  - xv. Issue any stop payments on refund checks and agree not to re-submit any refund request for the affected payee disbursement candidate until the day following the stop payment request (to ensure the stop payment has time to become effective and avoid having two "live" checks in process); and
  - xvi. Indemnify and hold the Company harmless for any and all liabilities, damages, expenses, or losses incurred by the Company because of any act or omission of the Institution, its officers, employees, or End Users in connection with or relating to: (i) a provision of inaccurate payee information, (ii) a violation of any applicable laws, rules, or regulations, and (iii) any fraudulent refund activities.
- b. **Company Obligations:** The Company will:
- i. Upload Institution-provided payee disbursement candidate ACH payment profiles to the System, if applicable;
  - ii. Deposit funds to payee-nominated domestic checking or savings account or existing re-loadable prepaid debit card within three (3) business days of receipt of disbursement candidate file;
  - iii. For paper checks, mail checks within six (6) business days of receipt of disbursement candidate file;
  - iv. Within three (3) business days of being notified by bank, notify Institution of any transactions known to have rejected;
  - v. Adhere to all applicable laws, rules, or regulations;

- vi. Maintain Professional Liability and Employee Dishonesty insurance at sufficient levels to reasonably offset the risk of loss;
- vii. Return non-negotiated funds back to Institution after the applicable period (currently 90 days); and
- viii. Undergo and submit an annual Title IV compliance audit.



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