

MASTER MUTUAL NON-DISCLOSURE AGREEMENT

This Master Mutual Non-Disclosure Agreement (“Agreement”) is entered into as of this ____ day of _____, 20____, by and between the Pennsylvania Higher Education Assistance Agency, a public corporation and governmental instrumentality organized under the laws of the Commonwealth of Pennsylvania, t/d/b/a American Education Services (“PHEAA”), and _____, a _____ (“_____”), collectively referred to as the “Parties.”

The Parties may have heretofore engaged in and do contemplate entering into future transactions that involve the delivery of Confidential Information (as defined herein) including, but not limited to, student loan information, customer information, proprietary work product, web products, capabilities, pricing, technical data, design, process, procedure, formula, business logic, presentation or strategy, new products, and marketing plans.

Further, the Parties may have heretofore entered into and may enter into future agreements with respect to the treatment of Confidential Information shared by one Party (“Disclosing Party”) to the other Party (“Recipient”) during the course of the business relationship between the Parties.

The Parties are entering into this Agreement to set forth their definitive understanding with respect to the governance and treatment of all heretofore disclosed or forthcoming Confidential Information shared by Disclosing Party to Recipient during the course of the business relationship between the Parties.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties mutually agree as follows:

ARTICLE 1. DEFINITIONS

The following capitalized terms shall have the meanings specified in this Article 1. Other terms defined in the text of this Agreement, and throughout this Agreement, shall have the meanings respectively ascribed to them.

1.1 “Affiliates” means all current or future entities that directly or indirectly, through one or more intermediaries, Control (as defined herein) or are Controlled by, or are under common Control with, Disclosing Party or Recipient, or that are successors (whether by change of name, dissolution, merger, consolidation, reorganization, or otherwise) to any such entities or their businesses and assets.

1.2 “Agreement” means this Agreement, as amended from time to time.

1.3 “Auditors” means Disclosing Party’s internal and external auditors.

1.4 “Breach” means any unauthorized acquisition of or access to data that compromises the security, confidentiality, or integrity of the Confidential Information maintained by or for Recipient.

1.5 “Confidential Information” shall include, but not be limited to, information disclosed by or through Disclosing Party to Recipient, whether in writing, orally or by another means, which is confidential and/or proprietary to Disclosing Party. Such information may include, without limitation: (a) Nonpublic Personal Information, as defined in 12 CFR Part 40, as amended from time to time, concerning Disclosing Party’s customers; (b) all forms and types of financial, business, technical, or economic information including oral presentations pertaining to services; marketing strategies; computer software, software designs, and services; business plans and logic; computer hardware used by Disclosing Party; targeting methods; and other information, documents, and materials that pertain to operation policies, procedures, and any other aspects of the business of Disclosing Party; (c) financial and pricing information of Disclosing Party involving student loans; and (d) proprietary software developed by the Disclosing Party. “Confidential Information” shall also include “Consumer Information” and “Customer Information” as defined in The Interagency Guidelines Establishing Standards for Information Security, 12 CFR Part 30 (Appendix B), as amended from time to time (“Guidelines”).

1.6 “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity through the majority ownership of voting securities.

1.7 “Objectives” means a program designed to (i) ensure the security and confidentiality of Confidential Information; (ii) protect against any anticipated threats or hazards to the security or integrity to Confidential Information; and (iii) protect against unauthorized access to or use of Confidential Information that could result in substantial harm or inconvenience to Disclosing Party.

ARTICLE 2. CONFIDENTIALITY OBLIGATION

2.1 Recipient shall use Confidential Information only as directed by Disclosing Party and shall not accumulate Confidential Information in any way or make use of Confidential Information for any purpose other than to perform the requirements necessary to fulfill the business transaction(s) agreed to by the Parties. Recipient shall not disclose, transfer, use, copy, or allow any employee or any third party access to any such Confidential Information, except for those who have a need to know such Confidential Information in order for

Recipient to accomplish the requirements of the business transaction(s) agreed to by the Parties and who are individually bound by contractual obligations of confidentiality and limitation of use sufficient to give effect to this Article 2. In no event shall Recipient disclose any such Confidential Information to any competitors of Disclosing Party. Without Disclosing Party's prior written consent, Recipient shall not disclose Confidential Information to any unauthorized party. Recipient shall treat Confidential Information with at least the same degree of care that it treats its own Confidential Information and shall exercise reasonable precautions to prevent disclosure of Confidential Information to unauthorized parties.

2.2 The obligations with respect to Confidential Information shall not apply to Confidential Information that: (a) at the time of disclosure was generally known by the public; (b) the Recipient obtained from a third party that it has reason to believe had the right to make such disclosure; (c) Disclosing Party specifically authorizes the Recipient to disclose; (d) either Party developed independently; or (e) becomes part of the public domain through no fault of the Parties. Nothing herein shall be construed to restrict Recipient from disclosing such Confidential Information as may be required by federal or state law, pursuant to a court order issued by a court of competent jurisdiction, or pursuant to a validly issued subpoena, or pursuant to a requirement of a valid and legal law enforcement investigation; provided, however, that if Recipient is required to make such disclosure, it immediately notifies Disclosing Party in advance in writing of such requirement for disclosure, so that Disclosing Party, at its own option and at its expense, may seek to restrain disclosure of such Confidential Information.

2.3 Recipient agrees that any unauthorized use or disclosure of Confidential Information may cause immediate and irreparable harm to Disclosing Party. Recipient acknowledges that Disclosing Party shall have the right to take all reasonable steps to protect its interests in keeping the Confidential Information confidential, including, but not limited to, injunctive relief and specific performance without proof of actual damages, and any other remedies as may be available at law or in equity, in the event Recipient does not fulfill its obligations under this Agreement. Notwithstanding the foregoing, this provision shall not be read, interpreted, or construed as a waiver of the sovereign immunity of the Commonwealth of Pennsylvania.

2.4 Unless necessary for its performance hereunder, neither Party shall use the other Party's name in any sales publication or advertisement or make any public statement relating to the other Party without obtaining the other Party's prior written consent.

2.5 Recipient shall not use the Confidential Information of Disclosing Party: (a) for its own benefit or that of any third party; (b) to Disclosing Party's detriment; or (c) in any manner other than to perform the requirements necessary to fulfill the business transaction(s) agreed to by the Parties.

ARTICLE 3. PRIVACY AND SECURITY

3.1 In addition to the obligations set forth in Article 2, Recipient shall comply with all federal and state laws, and rules and regulations of applicable regulatory agencies, protecting the Confidential Information and privacy rights of Disclosing Party and its customers, including, without limitation, Title V of the federal Gramm-Leach-Bliley Act and the federal Economic Espionage Act (18 U.S.C. Section 1831 et seq). Recipient will not directly or indirectly reuse or redisclose to any Affiliate, or any unaffiliated entity or person, any Confidential Information, including but not limited to, any personally identifiable customer information, provided by Disclosing Party during the course of the business relationship between the Parties for any purpose other than to accomplish the requirements of the business transaction(s) agreed to by the Parties.

3.2 Recipient agrees that it will not sell, disclose, transfer, or rent any Confidential Information to any third party nor will it use any Confidential Information on behalf of any third party, without the express written permission of Disclosing Party.

3.3 Electronic file transmissions between the Parties containing Confidential Information shall be encrypted.

3.4 Recipient shall implement and maintain an appropriate security program for Confidential Information received by Recipient from Disclosing Party designed to meet the Objectives. Recipient shall provide to Disclosing Party, upon request, a copy of its policy related to information security and any updates or amendments thereto.

3.5 As part of its information security program, Recipient shall take appropriate measures to properly dispose of Confidential Information, whether such information is in paper, electronic or other form. These measures should, at a minimum include:

- (i) Burning, pulverizing or shredding of papers containing Confidential Information so that the information cannot practicably be read or reconstructed;
- (ii) Ensuring the destruction or erasure of electronic media containing Confidential Information so that the information cannot practicably be read or reconstructed; and/or

- (iii) Ensuring that any third party who performs the activities described in (i) and (ii) on behalf of Recipient above does so in a manner consistent with this Section.

Recipient shall ensure that it does not retain Confidential Information for longer than it needs such information to perform the requirements necessary to fulfill the business transaction(s) agreed to by the Parties. Recipient's disposal policy shall require that such information is reviewed and destroyed on a routine basis consistent with Recipient's disposal policy.

3.6 Recipient shall have in place and follow a routine destruction policy for all Disclosing Party's Confidential Information. No such materials will be retained longer than such period as is set forth in Recipient's policy period for retention unless mandated by applicable law.

ARTICLE 4. BREACH OF CONFIDENTIALITY

4.1 In the event Recipient knows or reasonably believes that there has been a Breach, Recipient shall take the following actions:

- (i) Immediately notify Disclosing Party of such Breach.
- (ii) Identify to Disclosing Party at no cost to Disclosing Party what specific Confidential Information may have been Breached.
- (iii) Monitor any affected accounts for any unusual activity (if appropriate).
- (iv) Take measures to contain and control the incident to prevent further unauthorized access.
- (v) Remedy the circumstances that permitted such Breach to occur.
- (vi) Cooperate with Disclosing Party as necessary to facilitate Disclosing Party's compliance with any applicable federal or state law regarding unauthorized access of the Confidential Information.

In addition to any other remedy in this Agreement, Recipient shall fully reimburse Disclosing Party for the actual costs of mailing notices to individuals whose data has or may have been Breached, where such Breach is the direct result, in whole or in part, of Recipient's breach of this Agreement, Recipient's failure to conform to applicable law, or Recipient's negligence.

ARTICLE 5. TERM

5.1 The terms and conditions of this Agreement shall survive for a minimum of five (5) years after the date of delivery of the last item of Confidential Information between the Parties. Notwithstanding the

foregoing, the Recipient acknowledges that (i) its obligations under this Agreement with respect to the Disclosing Party's Confidential Information shall remain in effect for as long as such information shall remain Confidential Information under applicable law and (ii) its obligations under this Agreement with respect to the Disclosing Party's trade secrets shall remain in effect for as long as such information shall remain a trade secret under applicable law.

5.2 Upon either Party's written demand and/or upon termination of a business transaction between the Parties, Recipient shall destroy Disclosing Party's Confidential Information (including the removal of any copies of the Confidential Information in any form whatsoever on Recipient's computer and information storage systems). Recipient shall also provide to Disclosing Party a written certification of destruction signed by an officer of Recipient duly authorized to legally bind Recipient which certifies that no copies of the Confidential Information have been retained.

ARTICLE 6. MISCELLANEOUS

6.1 Choice of Law. This Agreement and the respective rights and obligations of the Parties shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania.

6.2 Entire Agreement; Conflicts Between Agreements. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and all prior agreements and understandings between the parties on the same subject are hereby rescinded and made null and void by mutual agreement.

6.3 Parties in Interest; Assignment. This Agreement is and shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and permitted assigns, but shall not be assigned by any Party without the written consent of the other Party hereto (which consent may be withheld in the sole discretion of such other Party).

6.4 Amendment. This Agreement may not be amended, modified, superseded, or rescinded, except by a written instrument or document signed by all Parties hereto.

6.5 Waiver. A failure or delay of either Party to enforce any of the provisions hereof may in no way be construed to be a waiver of such provisions of this Agreement. No rights or duties in this Agreement may be waived except in a written instrument or document signed by the Party charged with such waiver.

6.6 Severability. Any term, condition, or provision of this Agreement that is invalid, illegal or unenforceable

for any reason shall be ineffective only to the extent of such invalidity, illegality, or unenforceability, without affecting in any way the remaining terms, conditions, or provisions hereof or rendering any other term, condition, or provision of this Agreement invalid, illegal, or unenforceable.

6.7 Headings. The headings of the various sections, subsections and clauses are solely for the convenience of the parties hereto and shall not control or affect the meaning or construction of this Agreement.

6.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument.

6.9 Right to Know. _____ acknowledges, understands, and agrees that any information, proprietary or otherwise, which is provided by _____ to PHEAA may be subject to disclosure by PHEAA as a "public record" as defined by Pennsylvania's Right-to-Know Law, 65 P.S. § 67.101 *et. seq.*, as amended or as may be amended in the future. _____ accordingly waives and releases PHEAA from any actions at law or in equity from compliance with any such disclosure. _____ further acknowledges, understands, and agrees that any such disclosure does not constitute breach of any confidentiality provision otherwise provided for in this Agreement. In the event PHEAA is required to make such disclosure, PHEAA shall make commercially reasonable effort to notify _____ in writing in advance of any disclosure request or of other pending legal action instituted to enforce disclosure of this Agreement or any information, proprietary or otherwise, which is provided by _____ to PHEAA hereunder. The Disclosing Party shall conspicuously mark or identify Confidential

Information provided to the Recipient as "Confidential Proprietary Information." Failure to mark or identify Confidential Information as such shall excuse the Recipient from any and all liability for inadvertent disclosures resulting from the failure to mark or identify the Confidential Information. Further, failure to mark or identify Confidential information as such may result in such information being disclosed under Pennsylvania's Right-to-Know Law.

6.10 Notices; Communications. Any notice or other communication required or that may be given under this Agreement shall be in writing and delivered to the addresses set forth below. Notice shall be sent overnight delivery or registered or certified mail, return receipt requested, postage and express charges prepaid, and shall be considered delivered and effective three days after mailing.

If to PHEAA:

PHEAA
1200 North Seventh Street
Harrisburg, Pennsylvania 17102
Attention: Vice President, Administration

If to _____:

Attention: _____

The designation of the person to be so notified or the address of such person for the purposes of such notice may be changed from time to time by notice hereunder.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be signed as of the date first written above.

Pennsylvania Higher Education Assistance Agency

By: _____

Name: Sandra McIntyre

Title: Vice President, Administration

Federal Tax ID NO.: 23-1693362

Approved as to form and legality.

PHEAA General Counsel

By: _____

Name: _____

Title: _____

Federal Tax ID No.: _____

This contract is pre-approved by the Commonwealth of Pennsylvania, Office of Attorney General (9/28/06)-58-k-440.

Contract Number