

SLC PROVISION OF GOODS TERMS AND CONDITIONS

Parties

STUDENT LOANS COMPANY LIMITED, a company incorporated under the laws of England and Wales, with Company Registration Number 02401034 and having its registered office at 21 St Thomas Street, Bristol, BS1 6JS (hereinafter called "SLC"). VAT Registration number 556 4352 32.

and

[], a company incorporated under the laws of [] and having its registered office at [] (hereinafter called "the Provider")

WHEREAS:

- (A) SLC requires the Goods;
- (B) The Provider is willing to supply the Goods;
- (C) SLC has agreed to appoint the Provider to supply the Goods to SLC on the terms and conditions of this Agreement.

NOW THEREFORE THE PARTIES DO HERBY AGREE as follows:

1 DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the meanings set opposite them below:-

"**Account Manager**" means the person to be appointed by the Provider in accordance with Clause 12;

"**Charges**" means the charges for the Goods as specified in the Provider's Response;

"**Commencement Date**" means the last date of execution of this Agreement;

"**Confidential Information**" means any information relating to the businesses of the parties, their business systems and business processes and any Personal Data, and includes for the avoidance of doubt Proprietary Information;

"**Goods**" means the goods to be supplied by the Provider in accordance with the Specification;

"**Intellectual Property Rights**" means all patents, trade marks or trade names, registered designs or applications for any of those or copyright, database rights, design right or know-how or any other intellectual property rights of a similar nature arising anywhere in the world;

"**Legislation**" means the legislation for the purpose of implementing a student loan scheme in the United Kingdom being the Education (Student Loans) Act 1990, the Teaching and Higher Education Act 1998, and regulations made thereunder;

"**Loan**" means a student loan issued and administered by SLC pursuant to the Legislation;

"Notice" means a written notice served by SLC on the Provider pursuant to Clause 4.1;

"Personnel" means the Provider's full time and part time employees, engaged in connection with the supply of the Goods;

"Proprietary Information" means any information relating to a Loan, and generally all information or knowledge relating to SLC and its business or its affairs which comes into the possession of the Provider pursuant to this Agreement whether before or after this Agreement is signed or during the term of this Agreement;

"Provider's Response" means the response by the Provider to the Tender Document a copy of which is annexed hereto within Part 1 of Schedule 2;

"Review Date" means during the term of this Agreement the date (i) at the end of each calendar month for the first three months following the first service of Notice pursuant to Clause 4.1, and (ii) quarterly thereafter;

"SLC's Computer System" means the computer systems, incorporating hardware and software, utilised by SLC for the provision of the Student Loans Scheme;

"SLC Representative" means the SLC Representative to be appointed in accordance with Clause 13;

"Specification" means the specification for the Goods, as set out in the Tender Document and as varied by a Notice;

"Student Loans Scheme" means the student loans scheme operated by SLC pursuant to the Legislation; and

"Tender Document" means the Invitation to Tender (ITT) or the Request For Quotation (RFQ) issued to potential providers, including the Provider, a copy of which is annexed hereto within Schedule 1 and as varied by a Notice.

- 1.2 In this Agreement, unless otherwise specified or the context otherwise requires:-
 - 1.2.1 reference to a Clause is to a clause of this Agreement;
 - 1.2.2 reference to a Schedule is to a schedule to this Agreement;
 - 1.2.3 words importing the singular only shall include the plural and vice versa;
 - 1.2.4 reference to any statute or statutory provision or regulation shall include references to such statute or statutory provision or regulation as from time to time amended, extended or consolidated and shall include all statutory instruments and orders from time to time made pursuant thereto.
- 1.3 Headings to Clauses and Schedules are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.

2 **APPOINTMENT**

SLC hereby appoints the Provider and the Provider accepts the appointment as a non-exclusive supplier of the Goods to SLC on the terms and conditions set out in this Agreement.

3 **DURATION**

- 3.1 This Agreement shall commence on the Commencement Date and, subject to the terms of Clauses 15 and 28, shall continue thereafter:

- 3.1.1 until the acceptance by SLC of all Goods specified in the Tender Document or if the Tender Document does not describe an amount of Goods to be supplied to SLC,
- 3.1.2 for a maximum period of three (3) years or such other period as specified within the Tender Document,
whereupon this Agreement will automatically terminate
- 3.2 Notwithstanding Clause 3.1 SLC shall have the right to terminate this Agreement on any anniversary of the Commencement Date on giving the Provider at least thirty (30) days' prior notice.

4 **PROVISION OF GOODS**

- 4.1 SLC may from time to time, and in its absolute discretion, notify the Provider by the service of a Notice that it wishes Goods to be provided.
- 4.2 Upon the service of a Notice, the Provider shall acknowledge receipt of the Notice within forty eight (48) hours and shall supply the Goods in accordance with the Specification.
- 4.3 So far as not inconsistent with the Specification, the Provider shall supply the Goods in accordance with the Provider's Response, and shall provide the information required by the Tender Document.
- 4.4 SLC may at any time prior to the supply of the Goods described in a Notice amend or cancel that Notice. If SLC amend or cancel a Notice their liability to the Provider shall be limited to those costs reasonably incurred by the Provider in fulfilling the Notice incurred up until their receipt of the notice amending or cancelling the Notice, except where such amendment or cancellation results from the Provider's failure to comply with this Agreement SLC shall have no liability to the Provider in respect of such amendment or cancellation.
- 4.5 In the event that the Goods include bespoke software developed by the Provider, the Provider acknowledges that the ownership of all Intellectual Property Rights in such software and all relevant documentation will be transferred to SLC on payment of the Charges for the Goods.
- 4.6 In the event that the Goods include software generally offered for sale by a third party to the public in the normal course of that third party's business on substantially the same terms ("Off The Shelf Software") under this Agreement, the Provider shall ensure:
 - 4.6.1 that such Off The Shelf Software is licensed to SLC on terms allowing SLC to use such Off The Shelf Software as described in the Specification or as otherwise required in the normal course of their business;
 - 4.6.2 that it passes on to SLC the full and complete benefit of any warranty offered by any third party in connection with such Off The Shelf Software.
- 4.7 In supplying the Goods the Provider shall:
 - 4.7.1 act with a standard of reasonable skill and care and attention and all generally accepted industry standards and applicable best practice;
 - 4.7.2 comply with all applicable laws, enactments, orders, regulations and other instruments relating to the performance of their obligations hereunder;
 - 4.7.3 comply with any instructions of SLC; and
 - 4.7.4 not perform any action or make any statement that may bring SLC into disrepute.

5 **WARRANTIES IN RESPECT OF THE SUPPLY OF GOODS**

5.1 The Provider warrants that it has and will maintain throughout the continuance of this Agreement sufficient resources to enable it to meet SLC's requirements for Goods from time to time.

5.2 In particular, the Provider warrants that:

5.2.1 the Provider's Response is true and accurate and fully meets the requirements of SLC as set out in the Tender Document; and

5.2.2 there have been no changes in circumstances and no new information made available to the Provider which would render the Provider's Response untrue or inaccurate since its date.

5.3 The Provider warrants that the Goods supplied to SLC under this Agreement:

5.3.1 shall conform to the Specification,

5.3.2 be of satisfactory quality and fit for any purpose held out by the Provider or made known to the Provider by SLC,

5.3.3 be free from any defects in design, material and workmanship and remain so for twelve (12) months from their date of acceptance by SLC, and

5.3.4 comply with all applicable statutory and regulatory requirements.

5.4 The Provider warrants that any equipment and software contained within the Goods will be, where appropriate, compatible with and be capable of enabling data exchange with SLC's Computer System. SLC may refuse to accept any Goods comprising equipment and software unless SLC is satisfied that such equipment and software will operate correctly and will not disrupt SLC's Computer System.

5.5 The Provider warrants that it has obtained and will maintain throughout the duration of this Agreement an ISO 9000 certification or such other certification as is reasonably equivalent.

5.6 The Provider warrants that it has obtained and shall maintain all licenses, permissions, authorisations, consents and permits necessary for it to supply the Goods to SLC in accordance with the terms of this Agreement.

6 **DELIVERY**

6.1 The Provider shall deliver the Goods to the location specified in the Tender Document, or to such other location as may be notified in writing by SLC to the Provider.

6.2 Where the Provider delivers Goods to a third party for the purposes of carrying the Goods to SLC, such Goods shall only be deemed to be delivered to SLC when received and accepted by SLC at the location specified in the Tender Document, or such other location as notified to the Provider by SLC under Clause 6.1.

6.3 The Provider shall deliver the Goods specified in any Notice on the date specified in that Notice, or by such other date as SLC may notify in writing to the Provider.

6.4 If the Provider fails to deliver the Goods specified in a Notice by the date specified in that Notice, or such other date as notified in writing by SLC, SLC may:

6.4.1 refuse to take any subsequent attempted delivery of such Goods;

- 6.4.2 obtain substitute products from a third party supplier and recover from the Provider any costs and expenses reasonably incurred by SLC in doing so;
- 6.4.3 claim damages for any costs and expenses or losses resulting from the Provider's failure to deliver the Goods on the specified date; and / or
- 6.4.4 terminate this Agreement in whole or in part without liability to the Provider, in which case the terms of Clause 16 shall apply.
- 6.5 The Provider shall not deliver Goods specified in a Notice by instalment except with the prior written consent of SLC.
- 6.6 The Supplier shall ensure that any Goods supplied under this Agreement are properly packed and secured in such a manner as to enable them to reach SLC in good condition.

7 ACCEPTANCE

- 7.1 SLC shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect such Goods following delivery, or, in the case of a latent defect in such Goods, until a reasonable time after such latent defect has become apparent.
- 7.2 If any Goods delivered to SLC hereunder do not conform to the terms of this Agreement then SLC without limiting any other right or remedy it may have under this agreement or otherwise may:
 - 7.2.1 reject such Goods;
 - 7.2.2 require the Provider to repair or replace such Goods at the Provider's risk and expense within a period of seven (7) days, or forty eight (48) hours if the Goods relate to a critical aspect of SLC's business;
 - 7.2.3 require the Provider to refund to SLC any Charges paid in respect of such Goods; and /or
 - 7.2.4 claim damages for any costs, expenses, or losses resulting from the Provider's failure to deliver Goods in conformity with this Agreement.
- 7.3 If the Provider fails to undertake any actions as may be required by SLC under Clause 7.2, SLC shall be entitled to terminate this Agreement in which case the terms of Clause 16 shall apply. The Provider shall have no claim against SLC if termination occurs pursuant to this Clause.
- 7.4 The terms of this Agreement shall apply to any repaired to replacement Goods.

8 PERFORMANCE REVIEW

- 8.1 At each Review Date, the Account Manager and the SLC Representative will meet to review the supply of Goods with reference to the Notices issued.
- 8.2 In the event that the said review finds that the Provider has failed to provide any Goods in compliance with a Notice or otherwise in accordance with this Agreement then SLC without limiting any other right or remedy it may have under this agreement or otherwise may:
 - 8.2.1 require the Provider to rectify their performance in these areas within a period of seven (7) days, or forty eight (48) hours if the failure relates to a critical aspect of SLC's business;
 - 8.2.2 require the Provider to refund to SLC any Charges paid in respect of such Goods; and /or

8.2.3 claim damages for any costs, expenses, or losses resulting from the Provider's failure to provide Goods in conformity with a Notice or this Agreement.

8.3 If the Provider fails to undertake any actions as may be required by SLC under Clause 8.2, SLC shall be entitled to terminate this Agreement in which case the terms of Clause 16 shall apply. The Provider shall have no claim against SLC if termination occurs pursuant to this Clause.

8.4 SLC's remedies under this agreement are in addition to any rights or remedies available to it under any statutory conditions relating to the supply or sale of goods.

9 **RISK AND TITLE**

9.1 The risk in the Goods shall pass to SLC on delivery to SLC.

9.2 Subject to Clause 4.5 and 4.6 title to the Goods shall pass to SLC on delivery to SLC.

10 **CHARGES**

10.1 The Charges shall be as stated in the Tender Document and shall be fixed and not be increased without the prior written consent of SLC.

10.2 The Charges shall be inclusive of all costs relating to carriage, storage and insurance

10.3 The Charges shall be exclusive of any applicable Value Added Tax ("VAT") which shall be payable by SLC subject to receipt of a valid VAT invoice from the Provider addressed to SLC.

11 **PAYMENT**

11.1 The Provider shall be entitled to invoice SLC for all Charges payable in respect of any Goods supplied hereunder following satisfactory delivery of such Goods at the end of each calendar month following the month during which such Goods were delivered, provided always that such Goods were supplied otherwise in accordance with this Agreement.

11.2 All invoices will contain a full breakdown of each element of the Charges, together with such other information as SLC may reasonable request from time to time to enable the efficient processing of such invoices.

11.3 Invoices will be paid by SLC within ten (10) days of receipt in pounds sterling by direct bank transfer to such UK bank account as shall be nominated by the Provider and notified to SLC in writing.

11.4 SLC shall be entitled to set off any amounts owed to it by the Provider against any amounts payable by it to the Provider.

12 **PERSONNEL**

12.1 The Provider shall appoint an Account Manager, who shall, subject to this Clause 12, remain as Account Manager for the duration of this Agreement.

12.2 If the services of the Account Manager are no longer available to the Provider, the Provider agrees that, subject to SLC's approval of the relevant person, such approval not to be unreasonably withheld or delayed, the Provider shall appoint a person of similar experience and expertise to act as Account Manager within fourteen (14) days of the Account Manager becoming unavailable.

- 12.3 The Provider agrees that the Account Manager shall be responsible for co-ordinating the supply of Goods hereunder and handling any queries from SLC regarding any matters relating to the supply of Goods hereunder. The Account Manager shall have the authority under this Agreement to contractually bind the Provider on all matters relating to this Agreement.
- 12.4 The Provider shall employ and provide sufficient Personnel to enable the supply of Goods in full compliance with all the requirements of SLC who shall, where appropriate, be fully qualified or trained by the Provider for the activities they undertake.
- 12.5 All Personnel employed by the Provider in the supply of Goods will be and remain employees of the Provider. The Provider shall only employ competent persons with the relevant experience as Personnel.
- 12.6 The Provider shall maintain full responsibility for the Personnel and for their actions while at SLC's premises and shall ensure that all Personnel comply fully with the rules and regulations relating to security and personal conduct at SLC's premises from time to time in force.
- 12.7 SLC reserves the right, without reason, to refuse any Personnel access to SLC's premises or to require the Provider to remove any of the Personnel from SLC's premises immediately without reason if, in SLC's sole discretion, it is considered to be in the best interests of SLC or the proper running of SLC's premises. In such cases, SLC shall be entitled to instruct the Provider to provide a replacement.
- 12.8 If as a result of the Provider ceasing (for whatever reason) to supply the Goods, then the Provider shall indemnify and keep indemnified SLC against any claim, liability, cost, expense or demand in respect of Personnel which relates in any way to their employment prior to the Provider's ceasing to supply the Goods.
- 12.9 The Provider will not:
- 12.9.1 in the event of notice of termination of this Agreement for any reason with effect from the date on which such notice is given; or
- 12.9.2 during the three (3) months period before expiry of this Agreement;
carry out a Prohibited Act (as defined below) in relation to any of the Personnel, except where SLC's prior written consent (not to be unreasonably withheld) has been given.
- 12.10 Prohibited acts are:
- 12.10.1 the termination of the employment of any of the Personnel for any reason whatsoever save when in the reasonable opinion of the Provider, termination is justified for one of the reasons listed in section 98(2) of the Employment Rights Acts 1996;
- 12.10.2 the alteration or change in any way of any terms and conditions of employment of any of the Personnel (whether with or without the consent of the Personnel) other than for wage or salary awards which are in line with those offered generally for similar status individuals within the Provider's workforce or if required by law;
- 12.10.3 the recruitment (except as a replacement of any employee whose employment is terminated and where the replacement is being recruited on terms which are not materially better than the terms of the employee being replaced) of any additional Personnel; and

- 12.10.4 the assignment of any of Personnel to or from duties connected with the supply of the Goods.
- 12.11 The Provider shall comply with all applicable statutes, laws and regulations and agreements relating to the provision of information to and/or consultation with employees and/or any representatives in connection with the transfer of their contracts of employment upon termination of this Agreement to SLC or any new provider of the same or similar goods to the Goods and shall indemnify and hold harmless SLC against all claims by any employee or any such representatives arising out of its failure to do so.
- 12.12 The Provider shall (in relation to the Personnel):
- 12.12.1 give to SLC full details of the Personnel including, but not limited to details of the terms and conditions of employment and benefits (including but not limited to any bonus incentives, profit sharing scheme, employee share scheme and its accident and health insurance), working arrangement, outstanding obligations to increase remuneration, recognition, agreements and redundancy schemes (including all those persons temporarily absent from work for any reason, for example, maternity leave, sick leave or holiday) provided that any demands by SLC under this Clause shall specify which of the above details are required; and
- 12.12.2 subject to the Provider's obligations under the Data Protection Act 1998, give to SLC copies of all personnel and employment records (including without limitation National Insurance and PAYE records), employment contracts and statements of terms and conditions of employment and disciplinary records relating to the Personnel.
- 12.12.3 It is expressly acknowledged that SLC can pass information acquired pursuant to this Clause 12 on to a new provider of goods the same or similar to the Goods or a prospective new provider of goods the same or similar to the Goods.

13 **SLC's REPRESENTATIVE**

- 13.1 SLC shall nominate an SLC Representative to oversee the supply of the Goods. SLC shall advise the Provider from time to time of any change in the identity of the SLC Representative.
- 13.2 The SLC Representative shall be the Provider's point of contact within SLC and all correspondence or queries relating to the supply of Goods or this Agreement shall be referred to the SLC Representative.

14 **INSURANCE**

- 14.1 During the term of this agreement and for a period of one (1) year thereafter the Provider shall maintain in force the following insurance policies with reputable insurance companies:
- 14.1.1 Public liability insurance for not less than [£10 million] per claim;
- 14.1.2 Professional indemnity insurance for not less than [£5 million] per claim; and
- 14.1.3 Product liability insurance for not less than [£5 million] for claims arising from any single event and not less than [£5 million] in aggregate for all claims arising in a year.
- 14.2 The Provider shall promptly send a copy of the receipt for payment of the premiums relating to the insurances specified in Clause 14.1 to SLC. On demand the Provider shall provide SLC with copies of the insurance policy

certificates and details of the cover provided in relation to the insurances specified in Clause 14.1.

- 14.3 If the Provider fails or is unable to maintain insurance in accordance with Clause 14.1, or fails to provide evidence that it has paid the current year's premiums in accordance with Clause 14.2, SLC may, so far as it is able, purchase such alternate cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Provider.

15 **TERMINATION**

- 15.1 Either party shall be entitled to terminate this Agreement or the provision of any Goods under a Notice forthwith upon written notice to the other if:
- 15.1.1 the other party commits any breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within fourteen (14) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
- 15.1.2 an encumbrancer takes possession or an administrator, receiver, administrative receiver or similar official is appointed over any of the property or assets of the other party;
- 15.1.3 the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes or is declared bankrupt or has a trustee in bankruptcy appointed or goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the solvent company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement); or
- 15.1.4 the other party ceases, or threatens to cease, to carry on its business.
- 15.2 SLC shall be entitled to terminate this Agreement or the supply of any Goods under a Notice forthwith upon written notice in any of the following circumstances:
- 15.2.1 if, in the reasonable opinion of SLC, any action of the Provider or any matter affecting the Provider, whether in relation to this Agreement or otherwise, would bring SLC into disrepute; or
- 15.2.2 the control or management of the Provider transfers to any third party.
- 15.3 SLC shall have the right to terminate this Agreement or the supply of any Goods under a Notice by giving not less than thirty (30) days' notice in writing to the Provider following the occurrence of any one of the following circumstances or events:
- 15.3.1 the Legislation being wholly or partly repealed or amended;
- 15.3.2 the exercise or failure to exercise powers by the applicable Government body or minister under the Legislation so that SLC is not required to administer the Student Loan Scheme; or
- 15.3.3 the Department for Innovations, Universities and Skills or any Government minister responsible for the Student Loan Scheme requesting SLC to terminate this Agreement.
- 15.4 The rights to terminate this Agreement given under this Clause 15 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach, provided that the

Provider shall have no claim against SLC if termination occurs pursuant to the exercise of SLC's powers contained in Clause 15.2 or 15.3.

16 **CONSEQUENCES OF TERMINATION**

16.1 Upon termination of this Agreement howsoever arising:-

16.1.1 The Provider shall immediately return all materials or property of SLC which have come into the Provider's possession or under its control pursuant to this Agreement, including the Proprietary Information, and shall not make or retain any copies of such Proprietary Information.

16.1.2 Clauses 1, 4.5, 4.6, 5.3, 5.4, 12.8, 12.12, 14, 16, 18, 19, 20, 21, 22, 23, 24, 26, 27, 29 and 30 shall continue in force in accordance with their respective terms.

16.2 Subject as otherwise provided herein and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

17 **ASSIGNATION**

The Provider shall not be entitled to assign or sub-contract or sub-licence any of its rights or obligations under this Agreement in whole or in part, without the prior written consent of SLC.

18 **VARIATION**

This Agreement shall not be amended, modified, varied or supplemented in any way except in writing signed by two duly authorised representatives of each party.

19 **CONFIDENTIALITY**

19.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:

19.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

19.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

19.2 Clause 19.1 shall not apply to the extent that:

19.2.1 such disclosure is a requirement of any law, rule or regulation of any governmental or regulatory body having jurisdiction placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2002 provided that insofar as reasonably possible the party being required to make such a disclosure shall have informed the other party of such a need and shall have complied with the other party's reasonable instructions designed to protect the confidentiality of such Confidential Information;

19.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

19.2.3 such information was obtained from a third party without obligation of confidentiality;

- 19.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- 19.2.5 it is independently developed without access to the other party's Confidential Information. provided always that a party seeking to rely on this clause 19.2 can show by written evidence that such Confidential Information fulfils one of the criteria set out in clause 19.2.1 to 19.2.5.
- 19.3 Notwithstanding the terms of clause 19.2.4 if specific parts of the Confidential Information are or become generally available to the public otherwise by reason of a breach of this Agreement by the receiving party this shall not prevent any combination thereof from remaining Confidential Information provided that such combination is not already generally available to the public otherwise by reason of a breach of this Agreement by the receiving party.
- 19.4 The Provider may only disclose the SLC's Confidential Information to Personnel who are directly involved in the provision of the Goods and who need to know the information and shall ensure that such Personnel are aware of and shall comply with these obligations as to confidentiality.
- 19.5 The Provider shall not, and shall procure that the Personnel do not, use any of SLC's Confidential Information received otherwise than for the purposes of this Agreement.
- 19.6 [At the written request of the SLC, the Provider shall procure that those members of Personnel identified by SLC sign a confidentiality undertaking prior to commencing any work in accordance with this Agreement.]
- 19.7 Nothing in this clause 19 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
- 19.8 SLC acknowledges that the disclosure of Confidential Information belonging to the Provider may substantially prejudice the interests of the Provider. If and when SLC is in receipt of an information request pursuant to section 1 of the Freedom of Information Act 2000 (the "FOI") which relates to Confidential Information of the Provider, SLC may owe an obligation of confidentiality to the Provider in respect of the Confidential Information and, as such, that information may be capable of benefiting from one or more disclosure exemptions provided for under the FOI. Subject always to the proviso that SLC shall be entitled to act in a manner which, in its judgment, is compliant with the terms of the FOI, SLC shall:
- 19.8.1 consult with the Provider in advance of making any disclosure of such Confidential Information pursuant to an information request it receives; and
- 19.8.2 give reasonable consideration to any concerns which the Provider may raise in relation to the proposed disclosure.

19.9 The Provider shall not make any announcement to the press or the media or issue any statement or press release to the press or media in relation to this Agreement or the provision of the Goods.

19.10 For the avoidance of doubt any breach of the confidentiality of the Proprietary Information which is made by the Provider or by any person who has acquired the Proprietary Information in consequence of it having been disclosed to the Provider pursuant to this Agreement shall constitute an irremediable material breach by the Provider to comply with the terms of this Agreement.

20 **WARRANTIES**

20.1 The Provider warrants to SLC that:-

20.1.1 it has the power and capacity to enter into this Agreement and that it has obtained all necessary permissions, consents and authorisations which may be required to enable it to perform its obligations pursuant to this Agreement; and

20.1.2 it has notified SLC of any complaints from any third parties with regard to its supply of goods similar to the Goods and the resolution of such complaints.

21 **INDEMNITY**

21.1 The Provider shall indemnify and keep indemnified SLC from and against any and all claims, actions, damages, liabilities, costs and expenses howsoever arising, directly or indirectly, as a result of:

21.1.1 any negligent act or omission of the Provider, its employees, agents and servants in the supply of the Goods or as a result of the breach or non-performance by the Provider, its employees, agents or servants of any of its obligations under this Agreement;

21.1.2 any claim made against SLC that its use of the Goods supplied hereunder infringes any third party Intellectual Property Rights; and

21.1.3 any claim made against SLC by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omission of the Provider, its employees, agents or subcontractors.

22 **INTELLECTUAL PROPERTY**

22.1 The Provider acknowledges that all Intellectual Property Rights in any designs or materials generated or created by the Provider in the course of performing its obligations in terms of this Agreement shall vest in SLC. The Provider shall assign to SLC all Intellectual Property Rights which may come into existence in such materials without limitation.

22.2 The Provider, for the avoidance of doubt, further acknowledges that SLC shall be entitled to use any designs or materials prepared by the Provider in the course of their supply of the Goods for whatever purpose SLC may decide. The Provider will have no rights in the materials other than as agreed in writing with SLC.

22.3 Any Intellectual Property Rights in the Specification will remain owned by SLC, and no rights are granted in such Intellectual Property Rights save as necessary to enable the Provider to supply the Goods to SLC.

- 22.4 On the reasonable request of SLC, the Provider shall, do all such things and sign all documents or instruments necessary to enable SLC to obtain, defend and enforce the Intellectual Property Rights referred to in Clause 22.1.
- 22.5 The Provider acknowledges that no disclosure of any Proprietary Information or information concerning SLC's Computer Systems to it in terms of this Agreement will give the Provider any rights in the Intellectual Property Rights in the Proprietary Information or in SLC's Computer System.
- 22.6 The Provider may not (save as permitted by law) at any time reverse engineer or adapt, modify or alter in any way any software forming part of SLC's Computer System.

23 **SEVERANCE**

Each of the restrictions and provisions contained in this Agreement or in any variation shall be construed as independent of every other such restriction and provision to the effect that if any provision of this Agreement or any variation thereof or the application of any provision to any person, firm or company or to any circumstance shall be determined to be invalid and unenforceable to any extent, such provision shall be severed from the body of other provisions and such determination shall not affect any other provision in the Agreement or any variation or the application of such provision to any person, firm, company or circumstance all of which other provisions shall continue to be valid and enforceable to the fullest extent permitted by law.

24 **WAIVER**

- 24.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- 24.2 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement
- 24.3 A waiver or a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation, and a partial exercise of a right shall not preclude a subsequent complete exercise of that right.

25 **NOTICES**

Any notice (other than a Notice) required to be given hereunder by any party hereto shall be in writing sent by prepaid recorded delivery or registered post or by facsimile communication and shall be deemed effective if sent by post at the expiration of forty eight (48) hours after the same was posted whether or not received or if by facsimile communication, on the day of despatch to the correct fax number of the addressee.

The address and facsimile number for service of notices shall be:

in respect of: SLC
100 Bothwell Street
Glasgow G2 7JD

FAO

Facsimile Number: 0141 306 2005

in respect of: the Provider

FAO [INSERT DETAILS]

Facsimile Number:

Each of the parties hereto shall notify the others of any change of address or fax number within forty eight (48) hours of such change.

26 **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements in connection with the subject matter hereof. For the avoidance of doubt, any terms of business of the Provider are expressly excluded from this Agreement. Nothing in this Clause 26 shall operate to limit or exclude any liability for fraud.

27 **FURTHER ASSURANCE**

The Provider shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution or delivery of all documents and doing of all such things as are required to give full effect to this Agreement and the transactions contemplated by it.

28 **FORCE MAJEURE**

28.1 If either party is prevented from performing its obligations pursuant to this Agreement as a result of any matter beyond its reasonable control including fire, explosion, war, civil disorder, act of Government, statutory order or industrial dispute (but not of its own workforce) ("Force Majeure") then it shall notify the other party forthwith specifying the reason.

28.2 Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or the non-performance or partial performance of any of its duties or obligations under this Agreement, to the extent that the delay or non-performance or partial performance is due to the event notified in accordance with Clause 28.1, and the time for performance of that obligation will be extended accordingly. However, the Provider will not be excused for any failure or delay where such failure or delay could have been avoided (or where such delay or failure could have been mitigated, to the extent it should have been mitigated) by the adoption of contingency measures as set out in the Provider's Response.

28.3 The party affected by the event notified in accordance with Clause 28.1 will use reasonable endeavours to remove the cause of the event of Force Majeure and/or to mitigate the consequences of the event of Force Majeure. Forthwith upon the event of Force Majeure ceasing to exist, the party relying on it will give notice of this to the other party. If the event of Force Majeure continues for a period of more than fourteen (14) days, the party not affected shall have the right to terminate this Agreement upon giving seven (7) days' written notice of such termination to the other party.

29 **Freedom of Information**

29.1 The Provider acknowledges that SLC is subject to the requirements of the

FOI and shall assist and cooperate with SLC to enable SLC to comply with its obligations under the FOI.

- 29.2 The Provider shall and shall procure that its Sub-contractors shall:
 - 29.2.1 transfer to SLC all requests for information that it receives as soon as practicable and in any event within two Working Days of receiving any request under the FOI;
 - 29.2.2 provide SLC with a copy of all information in its possession, or power in the form that SLC requires within five Working Days (or such other period as SLC may specify) of SLC's request; and
 - 29.2.3 provide all necessary assistance as reasonably requested by SLC to enable SLC to respond to the request for information within the time for compliance set out in the FOI.
- 29.3 SLC shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether any information should be released under the FOI.
- 29.4 In no event shall the Supplier respond directly to any request for information unless expressly authorised to do so by SLC.

30 APPLICABLE LAW

This Agreement shall be governed by and construed in all respects in accordance with the law of Scotland and each of the parties hereby submits to the exclusive jurisdiction of the Scottish Courts in relation to all matters pertaining to or arising from this Agreement.

IN WITNESS WHEREOF, these presents consisting of this, the preceding [INSERT NUMBER] pages and the Schedules annexed hereto are subscribed as follows:

SUBSCRIBED for and on behalf
of STUDENT LOANS COMPANY LIMITED

Name

Position Held

Date

Address

Signature

Witnessed by

Name

Position Held

Date

Address

Signature

SUBSCRIBED for and on behalf
of [PROVIDER]

Name

Position Held

Date

Address

Signature

Witnessed by

Name

Position Held

Date

Address

Signature

This is Schedule 1 referred to in the foregoing agreement between Student Loans Company Limited and [INSERT PROVIDER NAME]

The Tender Document

This is Schedule 2 referred to in the foregoing agreement between Student Loans Company Limited and [INSERT PROVIDER NAME]

Part 1

The Provider's Response

Part 2

The Charges