

SOFTWARE SUPPLY AGREEMENT

Parties

1. [insert full company name] incorporated and registered in [insert country of incorporation] with company number [insert number] whose registered office is at [insert registered office address] (the “**Supplier**”).
2. Student Loans Company Limited incorporated and registered in England with company number 02401034 whose registered office is at 21 St. Thomas Street, Bristol, BS1 6JS (the “**Customer**”).

Background

The Supplier is the entire legal and beneficial owner, licensee, reseller and / or supplier of certain software products listed in Schedule 1 and is willing to integrate these products with the Customer’s existing software systems and licence or otherwise procure for the Customer the right to use these products.

Agreed terms

1 Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

“**Acceptance Certificate**” means the certificate to be signed by the Customer under clause 7.1.1;

“**Acceptance Tests**” means the tests of the Customer Software after integration to be agreed in accordance with clause 6.1 and annexed hereto in Schedule 4;

“**Affiliate**” means each and any subsidiary or holding company of the Customer or the Supplier and each and any subsidiary of a holding company of the Customer or the Supplier;

“**Authorised Agent**” means each and any agent, employee, contractor or sub-contractor of the Customer or its Affiliates who is engaged or employed by the Customer or its Affiliates to provide Relevant Services;

“**Change Agreement**” means a written agreement specifying any changes to the Customer Software, Specification, Pre-Installation Test Plan, Acceptance Tests or Licence Fees;

“**Commencement Date**” means the latest date of signature hereof;

“**Completion Date**” means the date specified in the Specification (which may be varied in accordance with clause 9) by which the Supplier is to provide the Integrated System Ready for Service;

“**Confidential Information**” means any information relating to the businesses of the parties, their business systems and business processes and any Personal Data;

“**Customer Software**” means the Software, any Modified Software and any Custom Software;

“**Customer System**” means all software, hardware and other equipment in possession of the Customer at the Software Delivery Date;

“Custom Software” means any software developed by the Supplier to ensure the Software or Modified Software meets the Specification;

“Data Controller” has the meaning set out in the Data Protection Act 1998;

“Data Subject” has the meaning set out in the Data Protection Act 1998;

“Data Protection Legislation” means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

“Date of Disposal” means the date on which a Divested Entity ceased to be an Affiliate of the Customer or ceased to be owned by the Customer or its Affiliates (as the case may be);

“Dispute Resolution Procedure” means the procedure described in clause 19;

“Divested Entity” means any:

- (a) company which at any time during the term of this licence is an Affiliate; and/or
- (b) business or undertaking which at any time as aforesaid is owned by the Customer or its Affiliates,
- (c) which, in the case of a company, ceases to be an Affiliate or, in the case of a business or undertaking, ceases to be owned by the Customer or its Affiliates;

“Documentation” means the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine readable forms to be supplied by the Supplier as specified in the Specification or as otherwise required by the Customer to make use of the Customer Software as permitted hereunder;

“End User Licence Agreement” means the Third Party Supplier terms and conditions governing the use of the Licensed Software copies of which are annexed hereto within Schedule 5;

“Infringement Claim” means any claim or action that the possession, use, development, modification or maintenance of the Licensed Software (or any part thereof) infringes the Intellectual Property Rights of a third party;

“Integrated System” means the system consisting of the Customer System, the Customer Software and the Documentation;

“Intellectual Property Rights” means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the

nature of intellectual property rights (whether registered or unregistered) and all applications for the same, 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;

"**Licence Fees**" means the fees more particularly described in the Specification;

"**Licensed Software**" means the Customer Software;

"**Manager**" means the person appointed by the Customer from time to time in order to fulfil the role described in clause 11.2;

"**Modified Software**" means the Software as modified by the Supplier in order to ensure the Software meets the Specification;

"**Personal Data**" has the meaning set out in the Data Protection Act 1998;

"**Pre-Installation Tests**" means the tests to be carried out on the Customer Software prior to delivery to the Customer as provided for in clause 4;

"**Pre-Installation Test Plan**" means the plan agreed by the parties for carrying out the Pre-Installation Tests annexed hereto in Schedule 3;

"**Ready for Service**" means installed, tested and having successfully passed the Pre-Installation Tests and the Acceptance Tests or having been otherwise deemed to be accepted within the provisions of clause 7;

"**Relevant Services**" means any services (including without limitation the services of consultant programmers, system maintainers, outsourcing, or disaster recovery or other service suppliers) which are provided to the Customer or its Affiliates or Authorised Agents for the purpose of, or in connection with, the permitted use, development, modification or maintenance of the Licensed Software;

"**Schedule**" means a schedule to this agreement;

"**Service Levels**" means those standards of performance to be achieved by the Supplier in performing its obligations hereunder as set out in the Specification;

"**Site**" means the location(s) at which the Customer Software is to be installed as specified in the Specification;

"**Specification**" means the document detailing the necessary function and specification and timescale for implementation of the Customer Software which incorporates the Tender Document annexed hereto as Schedule 2;

"**Software**" means the computer programs listed in Schedule 1 and all user documentation in respect of such programs;

"**Software Delivery Date**" means the delivery date specified in the Specification on which the Supplier will deliver the Customer Software to the Customer;

“**Source Code Materials**” means the source code of the Customer Software, all technical information and documentation required to enable the Customer to modify and operate the Customer Software and details of the origin of such source code;

“**Student Loans Scheme**” means the student loans scheme operated by the Customer pursuant to the Legislation;

“**Support Manager**” means the person appointed by the Supplier from time to time in order to fulfil the role described in clause 13.1;

“**Support Staff**” means those individuals who perform the Supplier’s obligations under this agreement, including (where the context permits) the Support Manager;

“**Tender Document**” means the document entitled [insert tender document title] and dated [insert tender document release date] and the Supplier’s tender in response to such document dated [insert date of tender response] a copy of which is annexed hereto within Schedule 2;

“**Third Party Supplier**” means a third party engaged by the Supplier to supply Licensed Software to the Supplier or the Customer;

“**Training**” means any training as specified in the Specification, to be provided by the Supplier to the Customer;

“**Warranty Period**” means in respect of the Customer Software a period of twelve (12) months from the Completion Date; and

“**Work**” means all the works, duties and obligations to be carried out by the Supplier pursuant to this agreement.

- 1.2 **Holding company** shall be construed in accordance with sections 736 and 736A of the Companies Act 1985, as amended.
- 1.3 **Subsidiary** shall be construed in accordance with sections 736 and 736A of the Companies Act 1985, as amended.
- 1.4 The headings in this agreement do not affect its interpretation. Save where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this agreement.
- 1.5 Unless the context otherwise requires:
 - 1.5.1 references to the Supplier and the Customer include their permitted successors and assigns;
 - 1.5.2 references to statutory provisions include those statutory provisions as amended or re-enacted; and
 - 1.5.3 references to any gender include all genders.
- 1.6 In the case of conflict or ambiguity between any provision contained in the body of this agreement and any provision contained in the appendices, the provision in the body of this agreement shall take precedence.

1.7 Words in the singular include the plural and in the plural include the singular.

2 Duration

Notwithstanding the date or dates of execution, this agreement will commence as of the Commencement Date and subject to any mandatory provisions from time to time in force under any applicable legal system which expressly or by implication apply notwithstanding the terms of this agreement and subject to earlier termination under clauses 4.3.3, 6.4.4, or 20 will continue in full force and effect until the Supplier provides the Integrated System Ready for Service.

3 Software

3.1 The Supplier shall develop and integrate the Customer Software in accordance with the terms of this agreement. In particular the Supplier shall create such Modified Software and Custom Software as is required to fully enable the Software to meet and perform in accordance with the Specification.

3.2 Within fourteen (14) days of the Commencement Date the Supplier shall deliver to the Customer at the Site:

3.2.1 one copy of the Software on disk or CD-ROM;

3.2.2 in so far as it has or is able to procure such, the Documentation; and

3.2.3 subject to clause 3.5, the Source Code Materials.

3.3 On the Software Delivery Date the Supplier shall deliver to the Customer at the Site:

3.3.1 one copy of the Customer Software on disk or CD-ROM;

3.3.2 the Documentation; and

3.3.3 subject to clause 3.5, the Source Code Materials.

3.4 On the Completion Date the Supplier shall deliver to the Customer at the Site, in so far as not already in the possession of the Customer:

3.4.1 one copy of the Customer Software on disk or CD-ROM;

3.4.2 the Documentation; and

3.4.3 subject to clause 3.5, the Source Code Materials.

3.5 Where the Customer Software incorporates any software publicly marketed and offered for sale to the public by a Third Party Supplier, the Supplier's obligation to deliver Source Code Materials in respect of such software shall only apply to the extent that such Source Code Materials are in the possession of the Supplier or that the Supplier is able to procure such.

4 Software testing

4.1 Before delivering any Customer Software to the Customer, the Supplier shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Specification once properly installed.

- 4.2 The Supplier shall carry out the Pre-Installation Tests on the Customer Software prior to delivery to the Customer in accordance with the following provisions:
- 4.2.1 no later than thirty (30) days from the Commencement Date, the Customer shall deliver to the Supplier proposed user acceptance criteria and test data for the Pre-Installation Tests for the Customer Software. These criteria and data shall be such as are reasonably required to show that each part of the Customer Software complies with the relevant parts of the Specification. The Supplier at their own cost shall provide the Customer with assistance to prepare such user acceptance criteria and test data at the Customer's request. The parties shall use best endeavours to agree the Pre-Installation Test Plan containing the Pre-Installation Tests for each part of the Customer Software within ten (10) days from the date of delivery to the Supplier of the proposed criteria and data, and such Pre-Installation Test Plan shall be annexed to this agreement as Schedule 3.
 - 4.2.2 within a reasonable time before the Software Delivery Date, the Supplier shall carry out the agreed Pre-Installation Tests for each part of the Customer Software. The Supplier shall give the Customer at least twenty four (24) hours' notice of the start of the Pre-Installation Tests and shall permit the Customer to observe all or any parts of the testing; and
 - 4.2.3 if any part of the Customer Software fails to pass the Pre-Installation Tests, the Supplier shall remedy the defects and deficiencies, and the relevant test(s) shall be repeated within fourteen (14) days.
- 4.3 If any part of the Customer Software fails, in some material respect, to pass the Pre-Installation Tests within four (4) weeks from the date of its second submission to the Pre-Installation Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion to specify (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on such part of the Customer Software on the same terms and conditions as are set out in clause 4.2. If such part of the Customer Software fails such further tests, then the Customer may:
- 4.3.1 request a repeat test under the provisions of this clause 4;
 - 4.3.2 permit installation of such part of the Customer Software subject to such change of acceptance criteria, amendment of the Specification and/or reduction in the Licence Fees as, after taking into account all the relevant circumstances, is reasonable; or
 - 4.3.3 if the Supplier is unable to correct material defects within a period of six (6) months from the start of Pre-Installation Tests under clause 4.2.2, reject the Customer Software as not being in conformity with this agreement, and terminate this agreement and recover any sums paid to the Supplier in respect of the Customer Software.

5 Integration

- 5.1 On the Software Delivery Date the Supplier shall:
- 5.1.1 install the Customer Software at the Site; and
 - 5.1.2 integrate the Customer Software with the Customer System to form the Integrated System;

on the terms and conditions set out in this agreement.

5.2 By the Completion Date the Supplier shall:

5.2.1 successfully carry out, in conjunction with the Customer, the Acceptance Tests;

5.2.2 provide the Integrated System Ready for Service;

5.2.3 provide the Training and the Documentation to the Customer;

5.2.4 provide the Customer with proof that the Supplier has general and professional liability insurance cover of at least [insert amount in words] Pounds Sterling (£[insert amount in figures]); and

5.2.5 subject to clause 3.5, deliver to the Customer any amended version of the Customer Software, the Documentation and the Source Code Materials created as a result of the Acceptance Tests;

on the terms and conditions set out in this agreement.

6 System acceptance tests

6.1 No later than thirty (30) days from the Commencement Date, the Customer shall deliver to the Supplier proposed user acceptance criteria and test data for the Acceptance Tests for the Customer Software. These criteria and data shall be such as is reasonably required to show that the Customer Software complies with the Specification. The Supplier shall provide the Customer with reasonable assistance to prepare such user acceptance criteria and test data at the Customer's request. The parties shall use best endeavours to agree the Acceptance Tests for the Customer Software within ten (10) days from the date of delivery to the Supplier of the proposed criteria and data.

6.2 Within ten (10) days of the Software Delivery Date, the Acceptance Tests shall be carried out. The Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during normal working hours. The Supplier shall carry out the agreed Acceptance Tests for the Customer Software unless the Customer notifies the Supplier, not later than five (5) days after the Software Delivery Date, that it will carry out the Acceptance Tests. The party carrying out the Acceptance Tests shall give the other party at least twenty four (24) hours' notice of the start of the Acceptance Tests and permit the other party to observe all or any part of the testing.

6.3 If the Customer Software fails to pass the Acceptance Tests, the Customer shall within seven (7) days from the completion of the Acceptance Tests or any part of these tests provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and deficiencies within fourteen (14) days and the relevant test(s) shall be repeated within fourteen (14) days.

6.4 If the Customer Software fails to pass any repeated Acceptance Tests within four (4) weeks from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion:

6.4.1 to with hold payment of any part of the Licence Fees becoming due as a result of successful completion of the Acceptance Tests;

- 6.4.2 to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the Customer Software on the same terms and conditions. If the Customer Software fails such further tests then the Customer shall be entitled to request a repeat test under the provisions of this clause 6 or to proceed under clause 6.4.3 or clause 6.4.4;
- 6.4.3 to accept the Customer Software subject to such change of acceptance criteria, amendment of the Specification and/or reduction in the Licence Fees as, after taking into account all the relevant circumstances, is reasonable; or
- 6.4.4 if the Supplier is unable to correct defects within a period of three (3) months from the commencement of Acceptance Tests under clause 6.2, to reject the Customer Software as not being in conformity with this agreement, in which event the Customer may terminate this agreement and recover any sums paid to the Supplier in respect of the Customer Software. In this event, the Supplier shall co-operate with the Customer in decommissioning the Customer Software and returning the Customer System to its state prior to the Acceptance Tests.

7 System acceptance

- 7.1 Acceptance of the Customer Software shall be deemed to have occurred on whichever is the earliest of:
 - 7.1.1 the signing by the Customer of an Acceptance Certificate for the Customer Software;
 - 7.1.2 the expiry of fourteen (14) days after the completion of all the Acceptance Tests, unless the Customer has given any written notice under clause 6.3; or
 - 7.1.3 the use of the Customer Software by the Customer in the normal course of its business.

8 Conduct of the work

- 8.1 The Supplier shall carry out the Work with reasonable diligence and despatch, in accordance with the Specification, and with reasonable skill and expertise, in particular in order to provide the Integrated System Ready for Service to meet the Specification by the Completion Date and to meet the Service Levels, subject to the provisions of clause 9.1.
- 8.2 The Customer shall co-operate with the Supplier in any manner reasonably required by the Supplier in order to carry out the Work, including, but not limited to, provision of information and data, making available suitably qualified employees and contractors of the Customer, provision of access to the Site for the Supplier's employees and contractors and provision when the Supplier personnel are working on the Site of supplies reasonably required by the Supplier, such as power and computer consumables.
- 8.3 The Supplier undertakes that in carrying out the Work its employees and contractors, while on the Site or any other premises of the Customer, will comply with all relevant rules and regulations laid down by the Customer for the behaviour of its own employees, and any other reasonable requirements of the Customer, and adhere to the Customer's security procedures and health and safety regulations, as from time to

time notified to the Supplier or otherwise brought to the notice of the Supplier or such persons. The Supplier shall remove any employee or contractor whom the Customer can demonstrate has failed to comply with such rules, regulations and requirements.

9 Extension of time

9.1 The Supplier shall be given an extension of time for completion of any part of the Specification if one of more of the following events occurs:

9.1.1 a force majeure event occurs as described in clause 22; or

9.1.2 delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third party contractors.

9.2 If an extension of time is requested by the Supplier under clause 9.1 the Manager and the Support Manager shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Specification shall be deemed amended accordingly.

9.3 If an extension of time is requested by the Supplier under clause 9.1 the Specification and Licence Fees (as appropriate) shall be amended to take account of such delay. Any request for amendment to the Licence Fees shall be accompanied by documentary evidence of the demonstrable effect of such delay upon the costs of the Supplier.

9.4 If the parties do not agree a request for amendment under this clause either party may elect for the matter to be determined under the Dispute Resolution Procedure.

10 Changes

10.1 The Customer may, by giving written notice to the Supplier at any time during the term of this agreement, request a change to the Specification or Customer Software.

10.2 Within seven (7) working days of receipt of such notice, the Supplier shall prepare for the Customer a written estimate of any increase or decrease in the Licence Fees, and of any effect that the requested change would have on the Software Delivery Date and Completion Date.

10.3 Within fourteen (14) working days of receipt of the written estimate referred to in clause 10.2, the Customer shall inform the Supplier in writing of whether or not the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed and signed a Change Agreement.

11 The customer's responsibilities

11.1 Without prejudice to clause 8.3, the Customer shall provide the Supplier, the Support Manager, the Support Staff and all other persons duly authorised by the Supplier with such access to the Customer's premises as may reasonably be required for the purpose of performing its obligations hereunder, such access to be within the normal working house of the Customer.

11.2 The Customer shall nominate a Manager to be available to liaise with, and respond to queries from, the Support Manager.

12 Meetings

For the duration of this agreement, the Manager, the Support Manager and such Support Staff as may from time to time be considered appropriate shall meet at least once in each calendar month, at a Customer office location and at a time to be agreed between the Manager and the Support Manager, for the purpose of discussing the Work, the performance by the Supplier of its obligations hereunder and achievement of the Service Levels and any other appropriate matters.

13 Support staff

13.1 In relation to the Support Manager:

13.1.1 the Supplier shall appoint a Support Manager who shall be responsible for the co-ordination of all obligations of the Supplier under the terms of this agreement. All communications, documentation and materials relating to this agreement shall be sent as appropriate by the Support Manager to the Manager. Each party shall notify the other in writing promptly in the event of any proposed change to those appointments; and

13.1.2 the Support Manager shall not be replaced without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed). The Customer reserves the right to request, on reasonable grounds, the replacement of the Support Manager or any other member of the Support Staff.

13.2 In addition to its Support Manager, the Supplier shall provide sufficient Support Staff to fulfil its obligations under the terms of this agreement. The Support Staff shall be suitably trained and experienced in the modification and integration of the Customer Software. They shall be familiar with the working of the Customer Software at the Customer's premises and in particular the Site and they will conform to the standards of behaviour and ability to be reasonably expected of such persons.

13.3 In the absence of the Support Manager or of any other member of the Support Staff for any reason (including the replacement of such person with the consent, or at the request, of the Customer), the Supplier shall supply a replacement person who:

13.3.1 is appropriately trained and competent to fulfil the role required of him; and

13.3.2 has undergone a suitable period of familiarisation with the obligations of the Supplier under the terms of this agreement and the Customer Software to enable him to perform the functions of the person whom he is replacing.

13.4 The Supplier shall ensure that the Support Manager and each member of the Support Staff (including any replacement that may be agreed between the parties) and any other employee, agent or subcontractor of the Supplier engaged in the performance of the obligations of the Supplier under the terms of this agreement shall at all times devote his or her entire time, attention, skill and ability to the same while on the premises of the Customer.

13.5 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Support Manager and the Support Staff. The Supplier shall indemnify and keep indemnified the Customer against any claim, liability, cost, expense or demand in respect of the Support Staff which relates in any

way to their employment and arises as a result of the Supplier ceasing (for whatever reason) to perform any or all of its obligations hereunder.

14 Further terms relating to the services

14.1 Except where expressly agreed in writing to the contrary, the Supplier shall, at its own cost:

14.1.1 provide all materials, parts, components and replacements; and

14.1.2 write, purchase or otherwise procure all computer programs,

required for the purpose of performing its obligations hereunder.

15 Licence

15.1 In consideration of the payment of the Licence Fees by the Customer to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Customer and its Affiliates a non-exclusive, perpetual licence commencing on, and including, the Commencement Date:

15.1.1 to use the Licensed Software;

15.1.2 to develop, modify and maintain the Licensed Software;

15.1.3 to grant to any Divested Entity a sub-licence to use the Licensed Software; and

15.1.4 subject to clause 15.3.2, to grant to any Authorised Agent a sub-licence to use, develop, modify and maintain, the Licensed Software.

15.2 Where the Licensed Software incorporates any software publicly marketed and offered for sale to the public by a Third Party Supplier the Customer's right to use such Licensed Software shall be further subject to the End User Licence Agreement relating to such software. In the case of any conflict between the terms of this agreement and such End User Licence Agreement, the End User licence Agreement shall take precedence.

15.3 In relation to scope of use:

15.3.1 for the purposes of clause 15.1.1, clause 15.1.3 and clause 15.1.4 above, "use" of the Licensed Software shall be restricted to use for the normal business purposes of the Customer or its Affiliate or (in the case of clause 15.1.3) any Divested Entity but shall include any act which is reasonably incidental to such use, including (without limitation) the creation of as many copies of the Licensed Software as may be necessary to enable use of the Licensed Software in accordance with this clause 15.3.1 and the maintenance of a reasonable number of back-up or test copies of the Licensed Software;

15.3.2 any sub-licence granted to an Authorised Agent pursuant to clause 15.1.4 shall limit the Authorised Agent's right to use (or, where permitted by clause 15.1.4, to develop, modify and maintain) the Licensed Software to such right as is necessary for the purpose of carrying out the Relevant Services only; and

15.3.3 except where stated in this agreement or in any Change Agreement, the Customer shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Licensed Software in whole or in part except:

15.3.3.1 as permitted by law; and/or

15.3.3.2 to the extent that such action is legitimately required for the purposes of integrating the operation of the Licensed Software with the operation of other software or systems used by the Customer or its Affiliates.

15.4 In relation to assignment and sub-licensing:

15.4.1 the Customer has no right to grant sub-licences except as expressly permitted under clause 15.1.3 or clause 15.1.4.

15.4.2 the Customer shall be permitted to assign the benefit and burden of this agreement as a whole to any company which at the time in question is an Affiliate of the Customer, subject to that company's first undertaking in writing to the Supplier that it will henceforth perform all the obligations of the Customer under this agreement. All references in this agreement to the Customer shall be construed as including any company to which such burden and benefit is assigned.

15.4.3 subject to clause 15.4.2, the Customer shall have no right to assign the benefit or burden of this agreement in whole or in part or to allow the Licensed Software to become the subject of any charge, lien or encumbrance without the prior written consent of the Supplier such consent not to be unreasonably withheld or delayed.

16 Licence fees and service levels

16.1 In consideration of the grant of licence to the Licensed Software and the performance by the Supplier of its obligations hereunder, the Customer shall pay the Licence Fees set out in the Specification. The Licence Fees shall be paid [monthly OR quarterly OR annually] [in advance OR in arrears] by the Customer to the Supplier within ten (10) days of receipt of the Supplier's invoice. The Licence Fees shall be inclusive of all expenses of the Supplier and the Supplier shall be responsible for all costs and expenses incurred in performing its obligations hereunder.

16.2 In relation to Service credits:

16.2.1 the Supplier shall perform its obligations hereunder in accordance with the Service Levels contained in the Specification (as applicable); and

16.2.2 in any month during the term of this agreement where the Supplier has failed to attain any Service Level, at the end of such month the Supplier shall credit the Customer with a percentage of the Licence Fees, such percentage to be a reasonable reflection of the Supplier's failure to attain such Service Level. The Customer's right to such credits shall be in addition to, and not in substitution for, any other rights arising from the Supplier's failure to perform its obligations hereunder in accordance with the terms of this agreement.

- 16.3 All amounts payable under this agreement shall be exclusive of value added tax (if any), which shall be paid at the rate and in the manner for the time being prescribed by law.
- 16.4 For the duration of this agreement, and for a period of six (6) years from termination or expiry of this agreement, the Supplier shall maintain full records of:
- 16.4.1 the Licence Fees and all charges, prices, costs and expenses associated with and invoiced in connection with this agreement; and
- 16.4.2 its performance against Service Levels as referred to in clause 16.2,
- and the Supplier shall keep these records available for examination by the Customer's authorised representatives at any time on reasonable notice from the Customer to the Supplier. If, on such examination, the Customer determines that any Licence Fees, charges, prices, costs or expenses exceed the amounts properly chargeable to, or recoverable from, the Customer, the Supplier shall promptly refund to the Customer the amount of such over-charges.

17 Supplier warranties, indemnities and undertakings

17.1 The Supplier warrants that:

- 17.1.1 it has the right to enter into this agreement and to grant to the Customer a licence to use the Customer Software as contemplated by this agreement;
- 17.1.2 this agreement creates binding obligations upon it in accordance with its terms;
- 17.1.3 the Customer Software does not infringe the Intellectual Property Rights of any third party;
- 17.1.4 the Customer Software is the original work of the Supplier or (where appropriate) the Third Party Supplier;
- 17.1.5 as of the Completion Date the Customer Software will conform in all material respects to the Specification and be free from defects for the Warranty Period and will comply with all applicable laws and regulations;
- 17.1.6 the Customer Software and the media on which the Customer Software is delivered will be free from viruses and other malicious code;
- 17.1.7 the media on which the Customer Software is delivered under this agreement will be free from defects;
- 17.1.8 its obligations hereunder will be performed:
- 17.1.8.1 in such a way as not to cause any fault or malfunction in the Customer System (or any related software or system of the Customer);
- 17.1.8.2 in such a way as not to cause any interruption to the business processes of the Customer (other than any agreed and unavoidable interruption which is required in order to perform its obligations hereunder in a proper and efficient manner); and

- 17.1.8.3 with all reasonable skill and care and in accordance with the highest professional standards attained by companies offering software of the type offered by the Supplier;
- 17.1.9 the Supplier has adequate resources to meet its obligations under this agreement; and
- 17.1.10 the Supplier has complied with and will comply with all applicable laws and regulations in performing the Work.
- 17.2 Subject to clause 17.5, clause 18 and clause 24 neither party shall have any liability for any losses or damages which may be suffered by the other or any Affiliate or any Divested Entity of the other (or any person claiming under or through the same), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within the following categories:
 - 17.2.1 special damage even though that party was aware of the circumstances in which such special damage could arise; or
 - 17.2.2 loss of profits, anticipated savings, business opportunity or goodwill.
- 17.3 The exclusions in clause 17.2 shall apply to the fullest extent permissible at law but neither party excludes any liability for death or personal injury caused by its negligence, or the negligence of its employees or agents.
- 17.4 If the Supplier receives written notice from the Customer of any breach by the Supplier of the representations and warranties contained in clause 17.1, the Supplier shall, at its own expense, remedy that breach within thirty (30) days following receipt of such notice, failing which the Customer shall be entitled to pursue such rights and remedies as are available to it.
- 17.5 Nothing in this agreement shall act to limit the Supplier's liability for misrepresentation.

18 Intellectual property rights indemnity

- 18.1 All Intellectual Property Rights in the Licensed Software belong and shall belong to the Supplier or (where appropriate) the Third Party Supplier.
- 18.2 The Supplier undertakes to defend the Customer from and against any Infringement Claim and shall fully indemnify and hold harmless the Customer from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Infringement Claim.
- 18.3 The Supplier undertakes for the period of this agreement to retain and to procure that any Third Party Supplier shall retain all significant information relating to the development of the Licensed Software including without limitation programmes notes, design documents, comments and notes made by any person who made a contribution to the development of the Licensed Software. At all times during the period of this agreement the Supplier will allow the Customer or its authorised agents on giving reasonable notice access to inspect and take copies of such information.
- 18.4 The Customer agrees that:

- 18.4.1 the Customer shall as soon as reasonably practicable notify Supplier in writing of any Infringement Claim of which it has notice;
 - 18.4.2 the Customer shall not make any admission as to liability or compromise or agree to any settlement of any Infringement Claim without the prior written consent of the Supplier, which consent shall not be unreasonably withheld or delayed; and
 - 18.4.3 the Supplier shall, on its written request and at its own expense, and on providing adequate security to the Customer for any liability under the indemnity contained in clause 18.2, be entitled to have the conduct of or settle all negotiations and litigation arising from any Infringement Claim and the Customer shall, at the Supplier's request and expense, give the Supplier all reasonable assistance in connection with those negotiations and such litigation.
- 18.5 Without prejudice to clause 18.2, if any Infringement Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier shall at its sole option and expense either:
- 18.5.1 procure for the Customer the right to continue using, developing, modifying or maintaining the Licensed Software (or any part thereof) in accordance with the terms of this agreement;
 - 18.5.2 modify the Licensed Software so that it ceases to be infringing; or
 - 18.5.3 replace the Licensed Software with non-infringing software;

provided that if the Supplier modifies or replaces the Licensed Software, the modified or replacement Licensed Software must comply with the warranties contained in clause 17.1 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this agreement been references to the date on which such modification or replacement was made.

19 Dispute resolution

- 19.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters of performance, procedure and management arising out of this agreement. Accordingly, it is agreed that the procedure set out in this clause shall be followed prior to the serving of written notice terminating this agreement, or in relation to any matter of dispute between the parties concerning performance, procedure or management.
- 19.2 In the event that any disagreement or difference of opinion arises out of this agreement, the matter shall be disposed of as follows:
- 19.2.1 the Manager and the Support Manager shall meet to attempt resolution. Should they not meet within fourteen (14) days of the date on which either party convenes a meeting to resolve the matter, or should they not be able to resolve the matter with fourteen (14) days of first meeting; then
 - 19.2.2 the matter shall promptly be referred by either party to the Legal and Compliance Manager of the Customer and the [state individual's position] of the Supplier for immediate resolution.

- 19.3 If, within fourteen (14) days of the matter first having been referred to the persons referred to in clause 19.2.2 no agreement has been reached as to the matter in dispute, the dispute resolution process shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by this agreement in respect of such matter without further reference to the dispute resolution process.
- 19.4 For the avoidance of doubt, this clause shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

20 Termination

- 20.1 Each party shall have the right, without prejudice to its other rights or remedies, to terminate this agreement immediately by written notice to the other if the other:
- 20.1.1 is in material or persistent breach of any of its or its obligations under this agreement and either that breach is incapable of remedy, or that other party has failed to remedy that breach within thirty (30) days after receiving written notice requiring it to do so; or
- 20.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
- 20.2 The Customer shall have the right, without prejudice to its other rights or remedies, to terminate this agreement immediately by written notice to the Supplier if the Supplier:
- 20.2.1 undergoes a change of control which does not result in control passing to a company that, immediately prior to the change in question, was an Affiliate of the Supplier; or
- 20.2.2 sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity.
- 20.3 The Customer shall be entitled to terminate this agreement forthwith upon written notice to the Supplier if, in the reasonable opinion of the Customer, any action of the Supplier or any matter affecting the Supplier, whether in relation to this agreement or otherwise, would bring the Customer into disrepute.
- 20.4 The Customer shall have the right to terminate this agreement by giving not less than thirty (30) days' notice in writing to the Supplier following the occurrence of any one of the following circumstances or events:
- 20.4.1 the Legislation being wholly or partly repealed or amended;

- 20.4.2 the exercise or failure to exercise powers by the applicable Government body or minister under the Legislation so that the Customer is not required to administer the Student Loan Scheme; or
- 20.4.3 the Department for Education and Skills or any Government minister responsible for the Student Loan Scheme requesting the Customer to terminate this agreement.
- 20.5 The Supplier shall have no claim against the Customer if termination occurs pursuant to the exercise of the Customer's powers contained in clause 20.2, clause 20.3 or clause 20.4.

21 Consequences of termination

- 21.1 On expiry or termination of this agreement, each party shall immediately return to the other all property and materials containing Confidential Information belonging to the other.
- 21.2 On expiry or termination of this agreement and for a period of six (6) months thereafter, the Supplier shall provide the Customer with such assistance as the Customer may reasonably require in order to minimise disruption to the Customer's business arising from such expiry or termination including without limitation such assistance as the Customer may reasonably require in order to facilitate engagement of a third party to provide services similar to those contemplated under this agreement.
- 21.3 Any termination of this agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of this agreement which is expressly, or by implication, intended to come into force or continue in force on or after that termination. Notwithstanding the foregoing the provisions of clauses 1, 13.5, 15, 16.4, 17, 18, 21, 23, 24.1.8, 24.1.9, 24.4, 25, 26, 27, 28, 30, 31 and 32 shall survive expiry or termination of this agreement.

22 Force majeure

No party shall be liable to the other for any delay or non-performance of its obligations under this agreement arising from any cause beyond its reasonable control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion.

23 Confidentiality

- 23.1 Each party will not (except to the extent necessary to perform obligations or exercise rights granted under this agreement) at any time during the period of this agreement or at any time thereafter disclose or use (or permit to be disclosed or used) any Confidential Information disclosed to it by the other party to or with any third party or to or with any of its employees who are not directly and necessarily involved in the performance of obligations or the exercise of rights granted under this agreement without the disclosing party's prior written consent. Each party will ensure that their employees to whom Confidential Information as referred to above is disclosed are made aware of the confidential nature thereof and comply at all times with the terms of this clause 23.
- 23.2 The obligation contained in clause 23.1 will not extend to any Confidential Information:

- 23.2.1 which is or becomes lawfully and generally available to the public otherwise than by reason of a breach of this agreement by the receiving party;
- 23.2.2 which is known to the party receiving the same at the time of disclosure and is at the relevant party's free disposal;
- 23.2.3 which the receiving party received from a third party lawfully entitled to disclose the same;
- 23.2.4 legally requires to be disclosed; or
- 23.2.5 is required to be disclosed in order to comply with the requirements of any law, rule or regulation of any governmental or regulatory body having jurisdiction, or of any recognised stock exchange or both provided that insofar as reasonably possible the party being required to make such a disclosure shall have informed the other party of such need and shall have complied with the other party's reasonable instructions designed to protect the confidentiality of such Confidential Information;

provided always that a party seeking to rely on this clause 23.2 can show by written evidence that such Confidential Information fulfils one of the criteria set out in clause 23.2.1 to 23.2.5.

- 23.3 Notwithstanding the terms of clause 23.2.1 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.
- 23.4 The Customer acknowledges that the disclosure of Confidential Information belonging to the Supplier may substantially prejudice the interests of the Supplier. If and when the Customer 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 Supplier, the Customer may owe an obligation of confidentiality to the Supplier 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 the Customer shall be entitled to act in a manner which, in its judgment, is compliant with the terms of the FOI, the Customer shall:
 - 23.4.1 consult with the Supplier in advance of making any disclosure of Confidential Information pursuant to an information request it receives; and
 - 23.4.2 give reasonable consideration to any concerns which the Supplier may raise in relation to the proposed disclosure.

24 Data protection

- 24.1 In so far as the Supplier processes any Personal Data on behalf of the Customer, the Supplier shall:
 - 24.1.1 process the Personal Data only on behalf of the Customer, only for the purposes of performing its obligations under this agreement and only in

accordance with instructions contained in this agreement or received from the Customer from time to time;

- 24.1.2 not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised in writing by the Customer;
- 24.1.3 at all times comply with the provisions of the Seventh Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 and, in so doing, provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within any timescales required by the Customer) and implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
- 24.1.4 take reasonable steps to ensure the reliability of any of the Supplier's personnel who have access to the Personal Data;
- 24.1.5 obtain prior written consent from the Customer before transferring the Personal Data to any third party in connection with the Work;
- 24.1.6 ensure that only those of the Supplier's personnel who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of this agreement and all of the Supplier's personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause;
- 24.1.7 not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the Data Subject itself) unless directed to do so in writing by the Customer;
- 24.1.8 notify the Customer within five (5) days if it receives:
 - 24.1.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 24.1.8.2 a complaint or request relating to the Customer's obligations under the Data Protection Legislation; or
 - 24.1.8.3 any other communication relating directly or indirectly to the processing of any Personal Data in connection with this agreement;
- 24.1.9 provide the Customer with full co-operation and assistance in relation to any complaint or request made in respect of any Personal Data, including providing the Customer with full details of any complaint or request, complying with a data access request within the relevant timescales set out in the Data Protection Legislation (but only in accordance with the Customer's strict instructions), providing the Customer with any Personal Data it holds in relation to a Data Subject making a complaint or request within the timescales required by the Customer, and providing the Customer with any information requested by the Customer;

- 24.1.10 permit the Customer or its external advisers (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Supplier's data processing activities and those of its agents, subsidiaries and sub-contractors;
 - 24.1.11 comply with all reasonable requests or directions by the Customer to enable the Customer to verify and procure that the Supplier is in full compliance with its obligations under this clause; and
 - 24.1.12 not without the consent of the Customer transfer Personal Data outside the European Economic Area without the prior written consent of the Customer and, where the Customer consents to such transfer, to comply with the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred, and any reasonable instructions notified to it by the Customer.
- 24.2 The Customer acknowledges that the Supplier is reliant on the Customer alone for direction as to the extent the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier shall be entitled to relief from liability in circumstances where a Data Subject makes a claim or complaint with regards to the Supplier's actions to the extent that such actions directly result from instructions received from the Customer.
- 24.3 The parties shall comply at all times with the Data Protection Legislation and shall not perform their obligations under this agreement in such a way as to cause either party to breach any of its obligations under the Data Protection Legislation. The Supplier shall immediately notify the Customer in the event that it becomes aware of any breach of the Data Protection Legislation by the Supplier in connection with this agreement.
- 24.4 The Supplier shall indemnify and keep indemnified the Customer from and against any and all claims, actions, damages, liabilities, costs and expenses howsoever arising, directly or indirectly, as a result of any breach by the Supplier, its employees, agents or servants of the obligations contained within this clause.

25 Waiver

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

26 Severability

If any provision of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

27 Amendments

Any amendment, waiver or variation of this agreement shall not be binding on the parties unless set out in writing, expressed to amend this agreement and signed by or on behalf of each of the parties.

28 Third party rights

No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

29 Notices

Any notice required to be given pursuant to this agreement shall be in writing, and shall be sent to the other party at the address set out for such party in this agreement. Notices may be sent by first-class mail or fax, provided that faxes are confirmed within twenty four (24) hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered seventy two (72) hours after posting and correctly directed faxes shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out in clause 29.

30 Entire agreement

This agreement and the documents annexed hereto as appendices contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

31 Further assurances

At its own expense each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

32 Governing law and jurisdiction

This licence shall be governed by and construed in accordance with [English law] and each party hereby submits to the exclusive jurisdiction of the [English courts].

Subscribed by []
at
on
by
before

Witness
Full Name
Address
Occupation

Subscribed by []
at
on
by
before

Witness
Full Name
Address
Occupation

This is Schedule 1 referred to in the foregoing agreement between The Student Loans Company Limited and [insert name]

The Software

**This is Schedule 2 referred to in the foregoing agreement between The Student Loans
Company Limited and [insert name]**

The Specification

This is Schedule 3 referred to in the foregoing agreement between The Student Loans Company Limited and [insert name]

The Pre-Installation Tests and Pre-Installation Test Plan

This is Schedule 4 referred to in the foregoing agreement between The Student Loans Company Limited and [insert name]

The Acceptance Tests

This is Schedule 5 referred to in the foregoing agreement between The Student Loans Company Limited and [insert name]

The End User Licence Agreements