

**Student Loan Services Agreement
between
The Regents of University of California
and
[Loan Servicer]**

THIS Agreement, entered into this ___ day of ___ 2004, and hereinafter referred to as "Agreement," is by and between The Regents of the University of California, hereinafter referred to as "University" and [Vendor Name], including its subcontractors at any tier, hereinafter referred to as "Loan Servicer."

In consideration of the mutual promises set forth below, University and Loan Servicer agree as follows:

Article 1. Scope of Work

- A. Loan Servicer shall furnish all equipment, software, personnel, material, and other resources sufficient to provide the services and products expeditiously and efficiently during as many hours per shift and shifts per week and at such locations as may be required under the Agreement. Such services and products shall be furnished to University in accordance with the specifications, capabilities, and requirements set forth in the RFP and Loan Servicer's response thereto.

- B. Loan Servicer shall perform the services required for the Federal Perkins Loan Program, which includes National Direct Student Loans and National Defense Student Loans; the Health Professions Student Loan Program; the Loans for Disadvantaged Students Program; the Primary Care Loan Program; the Nursing Student Loan Program; the Nurse Faculty Loan Program; a variety of University-funded and privately funded short-term and long-term student loan programs; sundry debts; and by mutual agreement between Loan Servicer and University as to the services to be provided, any future student loan programs University may desire to administer or other types of receivable accounts. The services and products shall comply fully with all provisions of applicable federal and state statutes and regulations, and publicly promulgated University policy. These include, but are not limited to, Title II of the National Defense Education Act of 1958, as continued under Title IV of the Higher Education Act of 1965, as amended, and Titles VII and VIII of the Public Health Service Act, as amended, including all supplementary regulations, policies, and administrative guidelines issued by the U. S. Department of Education, the U. S. Department of Health and Human Services, the U. S. Department of Treasury (including the Internal Revenue Service), the Federal Trade Commission, and any other federal and/or California statute or regulation and/or University policy that may be applicable to student loan billing, collection, credit bureau reporting, bankruptcies, the student loan interest deduction and associated reporting, the safeguarding of student loan information, and any other services required under this Agreement, including but

not limited to, complying with the Federal Freedom of Information Act of 1974, the Family Educational Rights and Privacy Act of 1974, Regulation Z (Truth-in-Lending), the Fair Credit Reporting Act, the federal Bankruptcy Code, the Taxpayer Relief Act of 1997, the Gramm-Leach-Bliley Safeguarding Rule, the California Public Records Act (California Government Code, Chapter 3.5), the California Information Practices Act (California Civil Code, Section 1798 et seq.), and the California Fair Debt Collection Practices Act (California Civil Code Section 1788 et seq.).

- C. Loan Servicer shall maintain accounting records, internal controls, and audit trails, process financial transactions, and generate reports in compliance with generally accepted accounting principles, which shall enable University to comply with the audit requirements under Office of Management and Budget (OMB) Circular A-133.
- D. Loan Servicer shall furnish all services under the Agreement to each of the campuses of the University of California and to the Office of the President, Student Financial Support, hereinafter referred to as the "Office of the President," which shall act as the administrative agency. In addition, Loan Servicer shall provide selected services, as required under the Agreement, to other University offices.
- E. If University's student loan accounts do not currently reside on Loan Servicer's system, Loan Servicer shall convert to its system University's student loan accounts that are currently on the system of another billing servicer. Such conversion shall occur in accordance with the provisions for conversion under the Agreement.
- F. Loan Servicer shall work actively and cooperatively with University to identify and implement for University mutually agreeable changes, enhancements, or new services, such as the increased utilization of technological advances, with the primary goal of finding improved cost-containment or cost-reduction solutions in every aspect of the services the Loan Servicer provides to University, either directly or indirectly, as in the case of services that streamline University operations. To the extent that the Loan Servicer realizes cost reductions as a result of these efforts, Loan Service agrees that those net cost savings shall accrue to University, and the provisions under Article 4, Item F "Prices" of the Agreement shall apply.
- G. At the point of termination, the scope of the Agreement shall include Loan Servicer's accommodation of reasonable requests from University for assistance, information, and services to insure a timely, orderly, and accurate transition to another vendor, even if those requests extend beyond what would otherwise be the scope and/or term of the Agreement. [Refer to Article 8, Item F "Terms of Payment" of this Chapter for payment of fees for services described herein.]

Article 2. Service Quality

The servicing functions provided by Loan Servicer hereunder, and any attendant data supplied in connection with, or as a result of, those servicing functions, shall be done in accordance with the specifications and performance standards set forth in the Agreement and, where no specific standards are set forth in the Agreement, shall be of

a quality equal to the quality generally provided and accepted in the servicing industry for the servicing of a student loan portfolio of a size and type similar to that of University's.

Article 3. Conversion

- A. If, at any time during the term of Agreement, Loan Servicer plans to convert University's loan portfolio to another system, e.g., Loan Servicer developed, or purchased, a new system to replace its current one, Loan Servicer shall provide a minimum of six (6) months' prior written notice to University regarding the details of its proposed plan.
- B. If University elects not to have its portfolio converted to the system proposed by Loan Servicer, University shall have the right to terminate the Agreement under the provisions of Article 18, Item C "Termination for Cause" of this Agreement.
- C. If University determines that such a conversion would be in University's best interests, the applicable provisions of Chapter IV, Section A "Conversion" of the RFP shall also apply.
- D. If University agrees to have its accounts converted to another system, all costs associated with such a conversion shall be borne entirely by Loan Servicer. In addition, University shall not be subject to new or increased costs for any service that was formerly performed by Loan Servicer, unless otherwise agreed to by University.
- E. All conversions are to be scheduled with the least inconvenience to the University and its borrowers.

Article 4. Prices

- A. Except as otherwise provided in this Article, the prices set forth in Price Sheets 1, 2, and 3a-3c shall represent the prices for calculating the maximum amount for the services and products that University agrees to pay during the first three (3) years of the Agreement, and if extended by mutual consent between University and Loan Servicer, the remaining ten (10) years of the Agreement.
- B. Throughout the term of the Agreement, which shall include all renewal periods, Loan Servicer shall make every effort to provide the best quality and highest level of products and service to University at the best possible prices. If, however, Loan Servicer experiences an increase in the cost of providing the services and products to University and seeks remuneration from University for that increased cost, Loan Servicer may request a price increase to its "Schedule of Basic Servicing Fees" (Price Sheet 2). The per-loan fee increase shall not exceed the equivalent of \$.005 per year and shall be effective no earlier than July 1, 2007.
- C. In addition to the price increases provided for in this Article, Loan Servicer may seek remuneration from University for all or a portion of Loan Servicer's actual increased

costs that are directly attributable to an applicable U. S. Postal rate increase that affects the cost of the mailings required under the Agreement. The cost of postal increases shall be provided for and calculated on the type of postage costs and the rates currently paid by Loan Servicer, as provided by Loan Servicer on Bidder Response Form 6 of the RFP.

- D. For periods subject to renewal, Loan Servicer shall provide to the Office of the President, by February 1 of the year for which a renewal option is being negotiated for the upcoming period beginning July 1, a proposed Schedule of Basic Servicing Fees with the proposed servicing prices for the proposed renewal period.
- E. Loan Servicer warrants that the prices quoted for services and that the services provided for herein during the term of the Agreement are being furnished at no less favorable pricing than the Loan Servicer quotes to its most favored customer for like services and quantities and to similar institutional accounts during the term of this Agreement. Loan Servicer shall not be obligated to charge the maximum amount allowed under this Agreement for any given service.
- F. University and Loan Servicer may mutually agree to amend the Agreement such that Loan Servicer is required to provide a reduced level of service than was originally required, or due to technological advances and/or other options available, provide a comparable or increased level of service at reduced costs. When such cost reductions occur, the net cost savings shall accrue to University. The form by which University realizes those cost savings shall be mutually agreed upon between University and Loan Servicer, e.g., a reduction to one or more of the servicing fees or a direct credit on the invoice against the amount owed by University to Loan Servicer. Such price reductions shall occur by an amendment to the Agreement.
- G. Subject to the provisions of Article 5 "Agreement Term" and of Item H of this Article of this Agreement, if Loan Servicer seeks remuneration for increased costs incurred in the provision of services under the Agreement, and if such increased costs result directly from the implementation of new federal and/or state statutory or regulatory amendments, University agrees to pay its pro rata share of the increased costs associated with these required amendments, or the amount Loan Servicer charges its other most favored customers, to offset the marginal cost of complying with such changes, whichever is less. Such price increases shall occur only by amendment to the Agreement.
- H. Subject to the provisions of Article 6 "Modifications to the Scope of Work" of this Agreement, if University and Loan Servicer mutually agree to amend the Agreement and University is the sole beneficiary of the change, and if Loan Servicer does not make available to any other clients a service or product that is identical, or substantially similar, to the one provided to University, and if such change affects the cost of, or the time required for performance of the Agreement, an equitable adjustment in the price or delivery or both shall be made. Such changes occur as an amendment to the Agreement. In the event Loan Servicer and University are unable to agree upon an

equitable price adjustment, such adjustment shall be computed on the basis of actual, documented costs incurred by Loan Servicer to effect the change.

Article 5. Agreement Term

Except as otherwise provided in this Agreement, the term of this Agreement shall commence upon execution of the Agreement and shall apply to the extent that Loan Servicer has conversion and/or other preparatory responsibilities to perform in order to fulfill, effective July 1, 2004, its Basic Services obligations pursuant to the Agreement. The Agreement shall continue through June 30, 2007. The Agreement may be renewable for ten (10) additional years in one to three year periods, beginning July 1, 2007, by mutual written Agreement.

Article 6. Modifications to the Scope of Work

- A. Before any amendment to the Agreement is agreed upon, Loan Servicer shall disclose fully all costs that would be charged to University, in the event Loan Servicer is required to provide new or enhanced services beyond the original scope of the Agreement, or cost reductions or discounts that would accrue to University, in the event Loan Servicer is relieved of a service obligation, either in whole or in part, as a result of the proposed amendment.
- B. Subject to Article 4 "Prices" of this Agreement, Loan Servicer shall institute and maintain changes in services provided under the Agreement when such changes result directly or indirectly from amendments to the Higher Education Act or other applicable federal or state statutes or regulations.
- C. University reserves the right to change the services to be performed within the scope of work with prior written notification and consent by Loan Servicer. In the event the type, volume, and nature of federal or other loans available for administration by University changes, Loan Servicer agrees to make any changes to the scope of work as are reasonably necessary and further agrees that University shall not be liable to Loan Servicer for any damages resulting from said changes, including, but not limited to, loss of anticipated profits.

Article 7. Standards of Work

The performance of work and services at any tier under this Agreement shall conform to high professional standards.

Article 8. Terms of Payment

- A. Except for Loan Servicer's responsibilities under "Conversion" of Chapter IV, Section A, of the Request for Proposal, Loan Servicer shall be paid in arrears, on a monthly basis, upon receipt by the Office of the President of a properly completed invoice for the services rendered in accordance with the provisions of the Agreement or based

upon rates that are reasonable and customary within the industry, whichever is less. Such payments shall not be considered progress payments.

- B. In accordance with Price Sheet 1 "Conversion Costs," Loan Servicer shall be paid in arrears, upon receipt by the Office of the President of a properly completed invoice for conversion services (Chapter IV, Section A, of the Request for Proposal) rendered in accordance with the provisions of the Agreement. Such payments shall not be considered progress payments.
- C. University shall not be subject to a monthly minimum servicing fee.
- D. Except as otherwise provided in this Article, University should make reasonable efforts to remit payment within thirty (30) days of receipt of a properly completed invoice from Loan Servicer. Loan Servicer shall notify the Office of the President if payment for services has not been received forty-five (45) days after University's receipt of the invoice. Notification shall alert the Office of the President to investigate the reasons for the delay, and if necessary, to expedite the issuance of the payment check. University shall not be subject to any late or finance charges.
- E. Any charges that University disputes shall be withheld from payment until such time as the amount in dispute is resolved to the satisfaction of University. Should such a dispute arise, University should notify Loan Servicer promptly in writing, as to the amount in dispute and the reason for the dispute.
- F. Upon termination, including, but not limited to, expiration of the Agreement, payment of the final monthly invoice may be withheld by University until Loan Servicer has satisfactorily fulfilled its responsibilities with regard to assisting University in converting University's student loan portfolio from Loan Servicer's system to that of another vendor's system. If a successful and complete conversion is delayed due to Loan Servicer's failure to perform satisfactorily, University may deduct, from the final payment, the costs incurred by University in securing services from another party to complete the conversion.

Article 9. Audit

- A. Loan Servicer shall contract with a third-party audit firm to conduct annual financial and compliance audits performed of every aspect of the Loan Servicer's administration of the University's funds. Such audits shall be conducted in compliance with industry standards and Federal financial aid program requirements in effect at the time the audit is conducted.
- B. Loan Servicer shall provide annually two copies of the audit report to the Office of the President and, if requested, one each to the individual campuses. The report can be provided on a CD rather than on paper.

Article 10. Inspection

- A. The Loan Servicer shall allow University representatives and/or their designees, at University expense, access to all records pertinent to this Agreement for the purposes of review and reproduction, and inspection and evaluation of the operations and facilities of the Loan Servicer at any time during normal business hours. Such access includes, but is not limited to, banking records, transactional accounting records, non-proprietary software and documentation, and borrower files.
- B. The Loan Servicer shall allow University representatives reasonable access to Loan Servicer's personnel associated with the administration of every aspect of the University's account for the purpose of obtaining relevant information.
- C. University should give the Loan Servicer reasonable prior notice, as determined by the circumstances, but in no case will University be obligated to give more than thirty (30) days' advance notice.

Article 11. Annual Financial Statement

On an annual basis, Loan Servicer shall furnish to the Office of the President and, if requested, to each campus a copy of its company's audited Financial Statement, including a balance sheet, profit and loss statement, and statement of cash flows for the prior year. If Loan Servicer's company is a subsidiary of a larger organization, financial data reflecting both the subsidiary organization's financial position, as well as the identical data relating to the parent, are to be submitted. The documents shall be prepared by a licensed Certified Public Accountant in accordance with generally accepted auditing standards. The University reserves the right, if it deems necessary, to request further financial information.

Article 12. Ownership, Use and Treatment of Data

A. Ownership of Data

All data that pertain to University, its students or borrowers, or, including, but not limited to, data developed pursuant to the Agreement, remain the property of University, irrespective of the medium on which it is stored, including data resident on the files in the possession of Loan Servicer.

B. Use and Treatment of Data

1. Use of Data

All data collected, maintained, and/or stored by Loan Servicer, as well as data developed pursuant to the Agreement, that pertain to University and/or its student loan records shall be accessed by Loan Servicer only for the purpose of providing the services under the Agreement.

2. Confidentiality of Data

Loan Servicer shall treat, with confidentiality, all data that pertains to, or is part of University's student loan records. Loan Servicer shall be responsible for ensuring that data security procedures are maintained when processing personally identifiable and sensitive data. Loan Servicer shall not release any data, materials, or files that pertain to, or are part of, University's loan portfolio unless such action has been requested in writing and is approved by an authorized University representative or as otherwise required by law. Loan Servicer has ultimate responsibility and liability for preventing the unwarranted disclosure of information pertaining to University or its student loan accounts.

3. Policies Pertaining to Student Records

Loan Servicer shall tailor the procedures for processing data provided by University or its students, or developed pursuant to the Agreement in accordance with the policies and any subsequent modification of the policies as outlined in the current edition of the "Policies Applying to Campus Activities, Organizations, and Students. The relevant policies are available at the following website: <http://www.ucop.edu/ucophome/coordrev/ucpolicies/aos/toc130.html>

Article 13. Safeguarding of Confidential Financial Information

A. Definitions:

1. *Covered Data and Information* includes *Confidential Financial Information* (defined below) required to be protected under the Gramm Leach Bliley Act (GLB), as well as any credit card information received in the course of business by the University, whether or not such credit card information is covered by GLB. Covered Data and Information includes both paper and electronic records.
2. *Confidential Financial Information* is that information that the University has obtained from a customer in the process of offering a financial product or service, or such information provided to the University by another financial institution. Offering a financial product or service includes offering student loans to students and faculty/staff housing loans, and other miscellaneous financial services as defined in 12 C.F.R. § 225.28. Examples of Confidential Financial Information include addresses, phone numbers, bank and credit card account numbers, income and credit histories and Social Security numbers, in both paper and electronic format.

B. Acknowledgment of Access to Covered Data and Information: Loan Servicer acknowledges that the Agreement allows the Loan Servicer access to Covered Data and Information. Specifically, access to the following categories of Covered Data and Information is anticipated under the Agreement:

1. Addresses;

2. Phone numbers;
 3. Income;
 4. Credit histories; and
 5. Social Security numbers.
- C. Prohibition on Unauthorized Use or Disclosure of Covered Data and Information:
Loan Servicer agrees to hold Covered Data and Information received from or created on behalf of University in strict confidence. Loan Servicer shall not use or disclose Covered Data and Information received from or created on behalf of University except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by University.
- D. Safeguard Standard: Loan Servicer agrees that it will protect the Covered Data and Information received from or created on behalf of University according to commercially acceptable standards and no less rigorously than it protects its own confidential information. Loan Servicer shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all such Covered Data and Information.
- E. Return or Destruction of Covered Data and Information: Upon termination, cancellation, expiration or other conclusion of the Agreement, Loan Servicer shall return the University Covered Data and Information to University unless University specifically requests that such data be destroyed. This provision shall also apply to all Covered Data and Information that is in the possession of subcontractors or agents of Loan Servicer. Unless otherwise provided for under the Agreement, Loan Servicer shall complete such return or destruction not less than thirty (30) days after the conclusion of this Agreement. Within such thirty (30) day period, Loan Servicer shall certify in writing to University that such return or destruction has been completed. To the extent return or destruction is not feasible, this Article of the Agreement shall remain in full force and effect.
- F. Term and Termination:
1. This Article shall take effect upon execution. The respective rights and obligations of Loan Servicer under this Article shall survive the termination of this Agreement.
 2. In addition to the termination rights established by the underlying Agreement, breach of this Article shall give University, in its sole discretion, the right to do any or all of the following:
 - (i) exercise any of its rights to reports, access and inspection under this Article; and/or

- (ii) require Loan Servicer to submit to a plan of monitoring and reporting, as University may determine necessary to maintain compliance with this Article; and/or
 - (iii) provide Loan Servicer with a fifteen (15) day period to cure the breach; and/or
 - (iv) terminate the Agreement immediately if Loan Servicer has breached a material term of this Article and cure is not possible.
3. Before exercising any of these options, University shall provide written notice to Loan Servicer describing the violation and the action it intends to take.
- G. Subcontractors and Agents: If Loan Servicer provides any Covered Data and Information which was received from or created on behalf of University to a subcontractor or agent, then Loan Servicer shall require such subcontractor or agent to agree to the same restrictions and conditions as are imposed on Loan Servicer by this Article.
- H. Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information: Loan Servicer shall report to University any use or disclosure of Covered Data and Information not authorized by this Agreement or in writing by University, including any reasonable belief that an unauthorized individual has accessed a database containing Covered Data and Information. Loan Servicer shall make the report to University not less than two (2) business days after Loan Servicer learns of such use or disclosure. Loan Servicer's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the University Covered Data and Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Loan Servicer has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Loan Servicer has taken or shall take to prevent future similar unauthorized use or disclosure. Loan Servicer shall provide such other information, including a written report, as reasonably requested by University.
- I. Indemnity. Service Provider shall defend and hold University harmless from all claims, liabilities, damages, or judgments involving a third party, including University's costs and attorney fees, which arise as a result of Loan Servicer's failure to meet any of its obligations under this Article.

Article 14. Use of University's Name

Loan Servicer shall not use University's name in any manner without the prior written approval of University. Application for approval to use University's name shall be made to University's representatives, identified in Article 27 "Notice" of this Agreement.

Article 15. Warranties

Loan Servicer understands the services requested in Articles 1 "Scope of Work" and 2 "Service of Quality" of this Agreement and warrants that its services and products are fit for the specific purposes intended.

Article 16. Liquidated Damages

A. Definitions: For purposes of this Article, the following definitions shall apply:

1. Location- Office of the President and each of the other locations where University utilizes Loan Servicer's online service(s).

2. Basic Service

Products or services specified in whole or in part in Chapter IV "Basic Services" of the RFP, together with deviations and enhancements identified by Loan Servicer and accepted in writing by University, and any additional services identified by Loan Servicer and accepted in writing by University as part of the Agreement.

3. Work Day

The work day period is from 7:00 a.m. to 6:00 p.m., Pacific Time, Monday through Friday. Additionally, any prearranged period of online service beyond these normal work hours and days, excepting all of any portion of such a period which University and Loan Servicer have previously agreed will be a time of no online service.

4. Work Week

A five-day period from Monday through Friday, and any prearranged period of online service which occurs on Saturday or Sunday, excepting those periods which University and Loan Servicer have previously agreed will be a time of non-online service.

5. Downtime

Downtime for each incident shall start from the time University contacts Loan Servicer's designated representative, as indicated in Chapter IV, Section J, of the RFP, and shall end when there is full online accessibility at any University Location as confirmed by University to Loan Servicer.

The following conditions shall not constitute downtime: (i) The initial fifteen (15) calendar days beyond the commencement of the Agreement; (ii) failure of University's equipment; (iii) slow response time and brief, intermittent outages unless the slow response time or intermittent outages are excessive and render the online system unusable by any University Location because of its slowness and/or unreliability. Slow response time or brief, intermittent outages that University does not classify as Downtime shall, instead, be regarded as examples of loss or degradation of service.

6. Liquidated Damages

An amount reimbursed by Loan Servicer to University in compensation for damage and/or loss to University, sustained as a result of Loan Servicer's failure to perform in accordance with this Agreement and/or as specified in the RFP.

7. Occasion

An occurrence where University notifies Loan Servicer that a specific Location is experiencing Downtime.

B. Liquidated Damages for Downtime

Loan Servicer shall not be liable for the failure of University equipment, but it shall be responsible for troubleshooting Downtime and to perform diagnostic testing to insure that Loan Servicer's system, equipment, and the lines for which Loan Servicer is responsible are working properly. If, as a result of this investigation, University equipment failure is deemed to be a likely cause of the Downtime, Loan Servicer shall so inform University. If University has Downtime, Loan Servicer agrees that, after two consecutive Work Days, the amount of damage which shall be sustained shall be five hundred dollars (\$500) per Location per Work Day, and Loan Servicer shall pay University such as Liquidated Damages. Except with respect to defaults of subcontractor, Loan Servicer shall not be liable for Downtime attributable to Force Majeure (see Article 18, Item D "Force Majeure" of this Agreement). If the Downtime is caused by the default of a subcontractor and if such default is attributable to Force Majeure and occurs without the fault or negligence of either Loan Servicer or the subcontractor, Loan Servicer shall not be liable for Liquidated Damages for such Downtime unless:

1. The supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Loan Servicer to meet the required performance schedule; or
2. Loan Servicer has the presumptive contractual right to be compensated by the subcontractor for the loss; or
3. Loan Servicer has not made best efforts to compel the subcontractor to restore service.

C. Liquidated Damages for Loss or Degradation of all or part of the Basic Services under the Agreement except Downtime are as follows:

Subject to the provisions of Article 18, Item D "Force Majeure" of this Agreement and in addition to the liability terms under Item B of this Article, Loan Servicer shall be liable for Liquidated Damages for any material loss or degradation of each one of the Basic Services covered in the Agreement. Except for Downtime, which is covered under Item B of this Article, Loan Servicer shall pay Liquidated Damages in the amount of five thousand dollars (\$5,000) for each complete Work Day for each lost or

degraded Basic Service upon written notice by University of assessment of damages pursuant to the procedures specified below:

In the event of a loss or degradation of a Basic Service, University should:

1. Notify Loan Servicer in writing of the loss or degradation of service.
2. Monitor the service for at least thirty (30) calendar days to determine what progress Loan Servicer has made toward effecting a cure; the 30 days shall commence on the day Loan Servicer receives the written notice from University identifying the loss or degradation of service.
3. Give Loan Servicer prior written notice stating the results of the monitoring and identifying a date (not to be earlier than the date of such notice), on which the assessment of Liquidated Damages shall commence;
4. Review Loan Servicer's proposed remedy and respond in a timely manner, either consenting to such remedy or rejecting it, stating its reasons for rejection;
5. Notify Loan Servicer immediately when it becomes aware that service has been restored to University's level of satisfaction and the assessment of Liquidated Damages has been terminated.

In the event of a loss or degradation of a Basic Service, Loan Servicer shall:

1. Promptly inform University when a loss or degradation of service actually occurs;
2. Identify a person to represent Loan Servicer in matters related to a loss or degradation of service;
3. Submit for University review, written proposals for remedies to the loss or degradation, as well as the ramifications or consequences of each proposed remedy of which University shall be aware;
4. Obtain University approval prior to implementing the proposed remedies;
5. Implement the remedies approved by University;
6. Contact University daily to describe the current status and what efforts or plans Loan Servicer is making to remedy the loss or degradation;
7. Pay University within thirty (30) calendar days for any and all Liquidated Damages University assesses;
8. Pay University both principal and interest at the highest legal rate for Liquidated Damages not paid within thirty (30) calendar days;

9. Obtain University's written consent (which shall not be unreasonably withheld by University), that the identified loss or degradation of service has been remedied and that the assessment of Liquidated Damages shall cease.

D. University's claims against Loan Servicer for Liquidated Damages under this Article shall be limited to an amount which, when added to all amounts paid or owed by Loan Servicer under Article 18 "Termination" of this Agreement, shall not exceed two million dollars (\$2,000,000).

E. Non-exclusive Rights and Remedies

The rights and remedies of University provided in Items B and C of this Article shall not limit University with respect to rights and remedies for negligence or willful acts or omissions on the part of Loan Servicer that damage University in a manner other than as described in Items B and C of this Article. The remedies described in Items B and C of this Article shall not affect University's right to elect to pursue any other rights or remedies that are provided to University by law or under Agreement, including but not limited to, actual damages and/or termination.

Article 17. Waiver of Default

Any failure by University at any time, or from time to time, to enforce or require the strict keeping and performance by Loan Servicer of any of the terms or conditions of the Agreement shall not constitute a waiver by University of a breach of any such terms or conditions and shall not affect or impair such terms or conditions in any way, or the right of University at any time to avail itself of such remedies as it may have for any such breach or breaches of such terms or conditions.

Article 18. Termination

A. Termination for Convenience

Except as otherwise provided under the Agreement, University may, at any time on or after July 1, 2007, cancel or terminate the Agreement for the convenience of University. University should give at least sixty (60) days' written notice to Loan Servicer, stating the date on which the Agreement shall terminate. Except as otherwise provided under the Agreement, University should pay Loan Servicer for satisfactory performance provided through the date of such termination. No termination made under this provision shall preclude the University from thereafter entering into an Agreement with another Loan Servicer for similar services.

B. Termination for Non-acceptance of Assignment

If Loan Servicer merges with, or is acquired by, another company during the period July 1, 2004, through June 30, 2017, University shall have the right to cancel or terminate the Agreement if said company does not accept University's terms for assignment of the Agreement. University should give prior written notice to Loan

Servicer, stating the date on which the Agreement shall terminate under this section. The failure of said company to accept the assignment of the Agreement shall constitute a termination for cause, and the Loan Servicer shall be responsible for all University costs and expenses incurred in soliciting a new vendor, obtaining interim services until a new vendor is selected, and paying the selected vendor higher prices, if any, than would have been paid by University to Loan Servicer during the remaining term of the Agreement. Except as otherwise provided under the Agreement, University should pay Loan Servicer for satisfactory performance provided through the date of such termination.

C. Termination for Cause

1. In the event that University determines that Loan Servicer has materially breached the Agreement, University should notify Loan Servicer in writing of the nature of the breach and should give Loan Servicer thirty (30) calendar days during which Loan Servicer must effect a cure. If Loan Servicer refuses to effect a cure within the 30 day time frame, or if after thirty (30) calendar days of Loan Servicer's receipt of the written notice, University determines that the breach has not been cured to University's satisfaction, whichever occurs first, University may, by written notice, terminate the Agreement. In such event, University may purchase or otherwise secure services and, except as otherwise provided herein, Loan Servicer shall be liable to University for any excess costs occasioned University thereby.
2. In the event that Loan Servicer determines that University has materially breached the Agreement, Loan Servicer shall notify University in writing of the nature of the breach and shall give University one hundred twenty (120) calendar days to effect a cure. If, after one hundred twenty (120) calendar days, Loan Servicer determines that the breach has not been cured to its level of satisfaction, Loan Servicer may, by prior written notice, terminate the Agreement.

D. Force Majeure

Neither party shall be liable for any failure or delay in performance hereunder due to or resulting from any cause beyond its reasonable control including, but not limited to, acts of God or of the public enemy, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a or supplier due to such causes and without the fault or negligence of the subcontractor or supplier, provided that the party so affected notifies the other promptly of the commencement, nature, and estimated duration of the cause, unless either party determines that the products and/or services covered by this Agreement were obtainable from other sources in sufficient time to meet the required performance schedule.

E. Termination for Non-Appropriation of Funds

University reasonably believes that funds can be obtained sufficient to pay all monies due during the term of this transaction and hereby covenants that it will do

all things lawfully within its power to obtain, maintain and properly request and pursue funds from which payments for this transaction may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available administrative review and appeals in the event such portion of the budget is not approved. It is University's intent to make payments for the full term of this transaction. University represents that the use of the materials under this transaction are essential to its proper, efficient and economic operation.

F. Non-Exclusive Rights and Remedies

The rights and remedies of University provided in this Article shall not be exclusive and shall be in addition to any other rights and remedies provided by law or under this Agreement.

Article 19. Assignment and Subcontracting

This Agreement is assignable by University. Except as to any payment due hereunder, this Agreement may not be assigned or subcontracted by Loan Servicer without written approval of University. In case such consent is given, the Agreement term, at University option, should become renewable on an annual basis regardless of the previous Agreement. In no event shall Loan Servicer be relieved from any of the obligations of this Agreement and any transferee or subcontractor shall be considered the agent of Loan Servicer and, as between the parties hereto, Loan Servicer shall be and remain liable as if no such transfer or subcontracting had been made. Nothing contained in this Agreement shall create any contractual or agency relation between any subcontractor and University.

Article 20. Cooperation with Other Vendors

Loan Servicer and its subcontractors, if any, shall cooperate with University and University's other vendors and Loan Servicers and shall so carry on their work that other cooperating vendors and Loan Servicers shall not be hindered, delayed, or interfered with in the progress of their work.

Article 21. Proprietary Rights

Loan Servicer shall indemnify, defend, and hold harmless University, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any judgment or proceeding in which it is determined, or any settlement Agreement arising out of the allegation, that Loan Servicer's furnishing or supplying University with materials components, programs, practices, or methods under this Agreement or University's use of such materials, components, programs, practices, or methods supplied by Loan Servicer under this Agreement constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party.

The foregoing shall not apply unless Loan Servicer has been informed as soon as practicable by University of the suit or action alleging such infringement, Loan Servicer is given the opportunity as afforded by applicable laws, rules, or regulations to participate in the defense thereof, and, in the event of settlement, Loan Servicer has consented to the settlement of the claimed infringement. Loan Servicer's consent to settlement shall, however, not be required if a final decree or judgment of a court of competent jurisdiction does not require such.

Article 22. Loan Servicer's Liability and Insurance Requirements

- A. Loan Servicer shall defend, indemnify, and hold harmless University, its officers, employees, and agents, from and against all losses, expenses (including attorneys' fees), damages, and liabilities of any kind resulting from or arising out of this Agreement and/or Loan Servicer's performance hereunder, provided such losses, expenses, damages and liabilities are due or claimed to be due to the negligent or willful acts or omissions of Loan Servicer, its officers, employees, agents, subcontractors, or anyone directly or indirectly employed by them, or any person or persons under Loan Servicer's direction and control.
- B. Loan Servicer shall assume complete liability for any articles or material furnished by University to Loan Servicer in connection with the Agreement, and Loan Servicer agrees to pay the replacement cost of all such articles or material spoiled by it or otherwise not accounted for to University's satisfaction. The furnishing to Loan Servicer of any articles or material in connection with the Agreement shall not, unless otherwise expressly provided, be construed to vest title therein to Loan Servicer.
- C. Loan Servicer shall continuously maintain adequate protection of all work, materials, and equipment from damage, destruction, or loss, caused by the intentional acts or omissions or negligence of its employees or agents and shall protect University's property from damage, destruction, or loss, arising from the intentional or negligent acts or omissions of its employees in connection with this Agreement. Loan Servicer shall be liable for any such damage, destruction, loss, or injury.
- D. University shall not be liable or responsible for any accident, loss, assault, battery, defamation, false arrest, false imprisonment, invasion of privacy, intentional or negligent infliction of emotional distress, injury (including death) or damages during the term of performance of the scope of work to persons and/or property.
- E. In consideration of the above, Loan Servicer shall obtain, keep in force during the life of this Agreement, and maintain in full force and effect, the insurance coverage described in this Article, with an insurance carrier or carriers.
 - 1. Liability- If the following insurance is written on the claims made following termination of the Agreement, coverage shall survive for a period of no less than five (5) years. Coverage shall provide for a retroactive date of placement coinciding with the effective date of the Agreement.

- a. If available, Comprehensive Form General Liability Insurance (automobile owned, errors or omissions, non-owned, contractual, products and completed operations coverages included), with a combined single limit no less than \$3,000,000 per occurrence. If such form of coverage would not be obtainable, then:
 - b. Commercial Form General Liability Insurance with limits as follows:

• General Aggregate	\$5,000,000
• Products Completed Operations Aggregate	\$5,000,000
• Personal and Advertising Injury	\$1,000,000
• Errors and Omissions	\$2,000,000
• Each Occurrence	\$2,000,000
2. Business Auto Liability Insurance for owned scheduled, non-owned, or hired automobiles with a combined single limit of no less than \$1,000,000 per occurrence.
 3. Property Insurance including theft of Statement of Self-Insurance on Loan Servicer's equipment located on or around University premises, subject to approval by University.
 4. Workers' Compensation and Employers liability Insurance in a form and amount covering the Loan Servicer's full liability under Workers' Compensation Insurance and Safety Act of the State of California, and in accordance with applicable state and federal laws.
 5. Commercial Blanket Bond with a limit of no less than \$2,000,000 per occurrence covering all employees of Loan Servicer, including coverage to protect money and securities found in a Comprehensive Crime Policy.
 6. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of University and Loan Servicer against other insurable risks relating to performance.

It shall be expressly understood, however, that the coverage required herein shall not in any way limit the liability of Loan Servicer. Loan Servicer, upon execution of the Agreement, shall furnish University with Certificates of Insurance evidencing compliance with all requirements. Coverages referred to under Items 1a or 1b, 2, and 5, above, shall name University as an additional insured but only with respect to the negligent acts or omissions of Loan Servicer, its officers, agents,

employees, or any person or persons under Loan Servicer's direction and control. Certificates shall further make provisions for thirty-day (30) advance written notice to University of any modification, change, or cancellation of any of the above insurance coverages. Premiums on all insurance policies shall be paid by Loan Servicer and shall be deemed included in Loan Servicer's obligations under the Agreement at no additional charge.

- F. Loan Servicer shall at University request and expense obtain a performance bond in amount of a penal sum to be named by University.

Article 23. Equal Opportunity Affirmative Action

Loan Servicer shall not maintain or provide racially segregated facilities for employees at any establishment under its control. Loan Servicer agrees to adhere to the requirements set forth in Executive Agreements 11246 and 11375, and with respect to activities occurring in the State of California, to the California Fair Employment and Housing Act (Government Code section 12900 et seq.). Expressly, Loan Servicer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, ancestry, medical condition (as defined by California Code section 12925 (f)), marital status, age, physical and mental handicap in regard to any position for which the employee or applicant for employment is qualified, or because he or she is a disabled veteran or veteran of the Vietnam era. Loan Servicer shall further specifically undertake affirmative action regarding the hiring, promotion and treatment of minority group persons, women, the handicapped, and disabled veterans and veterans of the Vietnam era. Loan Servicer shall communicate this policy in appropriate languages to all persons concerned within its company, with outside recruiting services, and the minority community at large. Loan Servicer shall provide the University on request a breakdown of its labor force by groups, specifying the above characteristics within job categories, and shall discuss with the University its policies and practices relating to its affirmative action programs.

Article 24. Permits

Loan Servicer agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision in which the work under this Agreement is performed. Loan Servicer shall be liable for all damages and shall indemnify and save University harmless from and against all damages and liability which may arise out of failure of Loan Servicer to secure and pay for any such licenses or permits or to comply fully with any and all applicable laws, ordinances and regulations.

Article 25. Taxes

Loan Servicer shall pay all contributions, taxes and premiums payable under federal, state and local laws measured upon the payroll of employees engaged in the performance of work under this Agreement, and all applicable sales, use, excise,

transportation, privilege, occupational and other taxes applicable to materials and supplies furnished or work performed hereunder and shall save University harmless from liability for any such contributions, premiums, and taxes.

Article 26. Other Applicable Laws

Any provision required to be included in a contract of this type by any applicable and valid federal, state or local law, ordinance, rule or regulations shall be deemed to be incorporated herein.

Article 27. Notice

All notices required under this Agreement shall either be in writing, by facsimile, or by electronic mail and shall be delivered as indicated below:

TO UNIVERSITY:

If by mail:

Jackie Ito-Woo, Associate Director, Student Financial Support
University of California, Office of the President
1111 Franklin Street, 9th floor
Oakland, CA 94607
Phone: 510-987-9544

If by facsimile:

Attention: Jackie Ito-Woo
510-987-9546

With a copy to:

Cindi Lamoureux, C.P.M.
UCLA Purchasing Department
10920 Wilshire Blvd. Suite 650
Los Angeles, CA 90024
Phone: 310-794-6030

TO LOAN SERVICER:

If by mail:

If by personal delivery:

Article 28. Independent Contractor

The relationship of the Loan Servicer to University shall NOT be that of an employee of University, but rather it shall be that of an independent contractor. Nothing in this Agreement shall be construed as authority for Loan Servicer to make commitments which could bind University, or to otherwise act on behalf of University, except as may be expressly authorized in writing by University.

Article 29. Request for Quotation

University's Request for Proposal No. UCOP044CL and Loan Servicer's response thereto shall be incorporated herein by reference as if fully set forth.

Article 30. Agreement of Precedence

In the event of conflict or inconsistency between the general terms and conditions of this Agreement, RFP# UCOP044CL, RFI# UCOP041CL, and Loan Servicer's response thereto, the following order of precedence shall be used to determine rights and obligations of the parties:

1. Written Amendments to this Agreement signed by both parties.
2. This original Agreement, dated _____.
3. UCOP RFP# UCOP044CL, including any attachments, exhibits, and amendments thereto.
4. UCOP RFI# UCOP041CL, including any attachments, exhibits, and amendments thereto.
5. University of California Appendix A.
6. Loan Servicer's RFP response.
7. Loan Servicer's RFI response.

Article 31. Severability

If any article, term or provision of the Agreement shall be held illegal, unenforceable or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected thereby.

Article 32. Governing Law

This Agreement is governed by the laws of the State of California.

Article 33. Taxpayer Identification Number

Pursuant to California Public Contract Code Section 10518, Loan Servicer agrees to provide its appropriate Taxpayer Identification Number (EIN or SSN) on each contract or purchase order entered into with University, regardless of the amount of the contract or purchase order.

Article 34. Entire Agreement

This Agreement, University Purchase Agreement No. PPSxxxxx, the UCOP Request for Proposal (RFP) No. UCOP044CL and all Appendices and Attachments, including, but not limited to, all amendments thereof, UCOP Request for Information (RFI) #UCOP041CL and all Appendices and Attachments, including, but not limited to, all amendments thereof, the Loan Servicer's RFP and RFI response thereof, including, but not limited to, all descriptions of services and exhibits, Price Sheet 1 "Conversion Costs," Price Sheet 2 "Schedule of Basic Servicing Fees," Price Sheet 3a "Schedule of Additional Fees--Chapter V," Price Sheet 3b "Schedule of Additional Fees--Basic Services," and Price Sheet 3c "Schedule of Additional Fees--Services Not Specified by the University" constitute the entire Agreement between the parties regarding the subject matter of this Agreement and supersedes all prior written or oral Agreements with respect to such. This Agreement may not be modified orally, and no modification shall be binding unless in writing and signed by authorized representatives of both parties.

LOAN SERVICER

By:

Title:

Date:

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

By:

Title:

Date: