

**MASTER SERVICES AGREEMENT
BETWEEN
DATAMARK, INC.
AND
PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY**

This Master Services Agreement ("MSA" or "Agreement") is dated as of July 17, 2018 (the "Effective Date"), by and between the Pennsylvania Higher Education Assistance Agency, a public corporation and governmental instrumentality organized under the law of the Commonwealth of Pennsylvania, having an address of 1200 North Seventh Street, Harrisburg, Pennsylvania 17102 ("PHEAA" or "Client") and DATAMARK, Inc. ("Contractor"), a Texas Corporation with its principal offices located at 123 W. Mills Ave. Ste. 400, El Paso, Texas 79901, referred to individually hereinafter from time to time as the "Party," and collectively as the "Parties."

Recitals

WHEREAS, Client desires to contract for certain document intake processing services; and

WHEREAS, Contractor has been selected by Client through a competitive process to perform such services;

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. **Definitions**. Capitalized terms used in this MSA or in any documents integrated into this MSA, shall have the meanings provided below unless otherwise indicated.

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

Amendment means a change, addition, or deletion to the legal terms and conditions of the MSA, whether associated with one or multiple SOWs, that requires a full execution and review for form and legality, including review by the Commonwealth of Pennsylvania Office of Attorney General.

"Business Day" shall mean Monday through Friday, excluding PHEAA's non-working holidays. As of the Effective Date of this MSA, PHEAA's non-working holidays are

New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving and the Friday after Thanksgiving, and Christmas Day.

Change Order means a change that implicates requirements but does not implicate legal terms and conditions, and which may be approved by a single authorized signatory for each Party and the PHEAA Legal Counsel.

"Confidential Information" means all confidential information as defined in the Master Mutual Non-Disclosure Agreement between Contractor and PHEAA dated September 8, 2016 ("MMNDA" - ME16C5-072), attached hereto as Appendix 1.

"Contractor" means DATAMARK, Inc. and, unless otherwise the context otherwise clearly precludes it or it is explicitly indicated otherwise herein, all persons or entities working for, with, or on behalf of DATAMARK, Inc., in pursuit of the fulfillment of the Agreement, including DATAMARK, Inc.'s employees and agents, subcontractors, directors and officers.

"Deliverables" shall mean any of the work product, data, fields, designs, concepts, suggestions, drawings, plans, programs, ideas, inventions, information, know how, methodology, research, strategies, compilations, instructional materials, samples, reports, and any other materials created by or for Contractor under this MSA for delivery to the Client, including unfinished Deliverables.

"Early Termination Date" means the effective date of any termination that precedes the termination date set forth in this MSA or applicable Statement of Work.

"Effective Date" shall mean, as to the MSA, the date this MSA is approved as to form and legality by the Commonwealth of Pennsylvania Office of Attorney General, or the date indicated in the MSA, whichever is later. As to any SOW, the Effective Date is the date the SOW is signed by all of the appropriate Party representatives, or the date indicated in the SOW, whichever is later.

"Inventions" shall mean and include all procedures, systems, machines, methods, processes, uses, apparatuses, compositions of matter, designs, configurations, computer programs, copyrightable material, notes, records, drawings, trade and service marks, trade dress and trade secrets of any kind, discovered, conceived, reduced to practice, developed, created, made, or produced, and any improvements to them, and shall not be limited to the meaning of the term "invention" under the United States patent laws.

"Out-Of-Pocket Expenses" shall mean, but is not limited to, pre-approved, reasonable and verifiable coach class travel, hotel accommodations, meal expenses and other related expenses, which CONTRACTOR incurs that are directly related to this MSA and its SOWs.

"Performance Matrix" shall mean the matrix contained in each Statement of Work wherein the measurements for performance of Contractor pursuant to the applicable Statement of Work are specified.

“Service Level Credits” shall mean funds returned to PHEAA, either by direct payment from Contractor or through offset from future invoices, in circumstances where the Contractor defaults in meeting service standards as agreed upon in a SOW.

“Services” shall mean the processing and data entry services, and any other services agreed upon by the Parties or as necessary, to complete the work under a Statement of Work.

“Source Materials” shall mean materials from consumers delivered or directed via common courier or some other mutually agreed upon method to Contractor by Client hereunder in connection with the Services to be performed under a Statement of Work.

“Statement of Work” or “SOW” shall mean a writing specifying necessary information, as set forth below in Section 8 of this MSA, related to the provision of Services, Deliverables, and Materials to Client by Contractor.

2. **Term.** This MSA shall commence on the Effective Date and shall continue until terminated as hereinafter set forth in Section 36. Each Statement of Work that may be entered into by the Parties under this MSA shall commence on or after the Effective Date and shall continue as therein specified until expiration, unless earlier terminated as set forth herein.
3. **Exhibits.** The following documents are attached to, and are hereby made a part of, this MSA, and the Parties agree to comply with them:
 - (a) Exhibit #1: MMNDA
 - (b) Exhibit #2: PHEAA Special Terms
 - (c) Exhibit #3: PHEAA General Terms
 - (d) Exhibit #4: PHEAA Vendor Travel and Expense Policy
 - (e) Exhibit #5: PHEAA Non-Discrimination Policy
 - (f) Exhibit #6: Statement of Work Template
4. **Order of Precedence.** In the case of a conflict between any SOW and the instant MSA signature document, including its Exhibits 1-5, the instant MSA signature document, including its Exhibits 1-5, shall take precedence. In the case of a conflict among and between the instant MSA signature document and its Exhibits 1-5, the following order of precedence shall apply:
 - (a) The MMNDA
 - (b) The PHEAA Special Terms
 - (c) The PHEAA General Terms
 - (d) The instant MSA signature document
 - (e) The PHEAA Non-Discrimination Policy
 - (f) The PHEAA Vendor Travel and Expense Policy

5. **Independent Contractor.** It is understood and agreed that Contractor will provide the Services under this MSA as an independent Contractor and that during the performance of Services under this MSA, Contractor's employees will not be considered employees, partners and/or representatives of Client for any purpose whatsoever. Accordingly, Contractor shall bear sole responsibility for any compensation, liability, health or disability insurance, retirement benefits, or other welfare or pension benefits, if any, to which Contractor or its employees may be entitled. Further, nothing herein shall be construed to entitle either Party to be a representative, agent, partner or joint venture of the other.
6. **Non-Exclusivity.** The Client reserves the right to purchase Services and Deliverables within the scope of this MSA through other vendors whenever the Client deems it to be in its best interest.
7. **Cooperation with Other Contractors.** The Client may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with other Contractors and Client employees, and coordinate its Services and/or its provision of Deliverables with such additional work as may be required. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor or by Client employees.
8. **Statements of Work.** Contractor shall perform the Services for the benefit of Client as outlined in one or more SOWs which will be attached hereto, incorporated herein, and governed by the terms and conditions detailed in this MSA. The Parties shall mutually agree on the content of each SOW. SOWs shall be signed by at least one signatory authorized to bind each Party.

The Parties may agree on additional Statements of Work from time to time. The SOW form shall be substantially similar to that attached hereto as Exhibit #6, Statement of Work Template. Each SOW should spell out, as applicable: (a) the begin date for the Services to be provided pursuant to that SOW; (b) a description of the Services to be performed; (c) a description of the Deliverables to be created; (d) the Performance Matrix; (e) the delivery date desired for any Deliverables, or any other durational requirements; (f) reporting obligations; (g) the fees to be paid by Client to Contractor for the Services, and at what interval; (h) Contractor's costs and expenses, if any, to be deemed reimbursable by Client; and (i) any other requirements for the Services or information deemed necessary by the Parties.

9. **ELECTRONIC SIGNATURES**

- a. The MSA, SOWs, and the Purchase Orders to which they may be attached, and other notices as contemplated herein, may be electronically signed by PHEAA or the Contractor.

- i. MSA and SOWs. An electronically affixed signature on a counterpart signature sheet indicates that the signatures of all the individuals required to bind PHEAA or the Contractor, as the case may be, to the terms of the MSA or SOW have been obtained.
 - ii. Purchase Orders. The electronically-printed name of the Purchasing Agent on the Purchase Order indicates that all approvals required by PHEAA contracting procedures have been obtained.
- b. PHEAA and the Contractor specifically agree as follows:

- i. Validity; admissibility. The Parties agree that no handwritten signature shall be required in order to make the MSA, SOW, or Purchase Order legally binding, notwithstanding contrary requirements in any law or regulation. The Parties hereby agree not to contest the validity or enforceability of the MSA, SOW, or Purchase Order executed electronically, or acknowledgement issued electronically, under the provisions of a statute of frauds or any other applicable law relating to whether certain agreements be in writing and signed by the party bound thereby. Any genuine MSA, SOW, Purchase Order, or acknowledgement executed or issued electronically, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall contest the admissibility of copies of a genuine MSA, SOW, Purchase Order, or acknowledgements under either the business records exception to the hearsay rule or the best evidence rule on the basis that the MSA, SOW, Purchase Order, or acknowledgement were not in writing or signed by the Parties.
- ii. Verification. Each Party will immediately take steps to verify any document that appears to be obviously garbled in transmission or improperly formatted to include re-transmission of any such document if necessary.

10. Acceptance of Deliverables. Each deliverable will be reviewed and accepted in accordance with the following procedure:
- a) Deliverables will be provided via the approved method and in a secure format approved by PHEAA's Enterprise Security Office. During the initial testing, the

PHEAA project-level executive sponsor will have three (3) Business Days to review the work and Deliverables and approve or disapprove of the method and format for the Deliverables.

- b) If the PHEAA project-level executive sponsor approves the method and format for the Deliverables, he/she will submit a request for approval to the PHEAA program-level executive sponsor and ask for permission to proceed. If the PHEAA project-level executive sponsor disapproves of the Deliverables' substance, method, or format, Contractor will meet or otherwise communicate with him/her to review the additional work and/or updated Deliverables needed to rectify the issue.
- c) Contractor will organize the project-level approval of Deliverables (documented via e-mail) and any appropriate documentation, and provide them to the PHEAA program-level executive sponsor for approval. The PHEAA program-level executive sponsor may request additional work and/or reasonable changes to the Deliverables as conditions to approval and permission to proceed with the SOW. If the PHEAA program-level executive sponsor requests additional work or changes to Deliverables, Contractor will work jointly with PHEAA to determine specific actions to be completed, prepare an updated project plan (if applicable) and financial impact to accomplish additional tasks and planned updates to the associated Deliverables as reasonable. Any material change or additional work requested will initiate the Change Order procedure.
- d) The PHEAA program-level executive sponsor will provide ongoing review (and monitoring) of the progress of all Services provided as set forth in applicable SOWs. The PHEAA program-level executive sponsor can utilize up to two (2) additional Business Days from the completed submission of materials by Contractor to provide the final program-level approval of the Deliverable substance, method or format or request specific remediation actions for the Deliverable. PHEAA program-level approvals will be documented (in PDF or other file format mutually agreed upon by the Parties) and tracked by applicable Contractor personnel and the program-level executive sponsor. If Contractor receives no response from PHEAA within the agreed upon time period, Contractor will escalate the issue to the PHEAA Project Steering Committee.
- e) For SOWs that require software operability and integration at the end of one or multiple SOWs, PHEAA's acceptance of a Deliverable or interim Deliverable shall be final unless at the time of final Acceptance, the Deliverable does not meet the functional specifications, requirements, or representations of the SOW(s), or the representations and warranties in the MSA and/or the SOW(s).
- f) All representations and warranties shall survive acceptance.

Any conflict arising from this Deliverable Materials Acceptance Procedure will be addressed as specified in the Dispute Resolution Procedure set forth in Section 44.

11. Performance.

- a. CONTRACTOR guarantees it will meet the established performance requirements / performance criteria /quality criteria set forth in the MSA and in each SOW. Incentives and Service Level Credits (SLCs) will be applied, as defined in a SOW, based on the actual performance results. Incentives and SLCs are defined as either fixed amounts or a percentage of the total charge for the Service or Deliverable being measured.
- b. PHEAA's acceptance of any financial credit incurred by the Contractor in favor of PHEAA for a SLC shall not bar or impair PHEAA's rights and remedies in respect of the failure or root cause as set forth elsewhere in this MSA, including without limitation other claims for liquidated damages, injunctive relief and termination rights; provided however, SLCs paid would be credited against any such claims for damages.
- c. CONTRACTOR and CLIENT agree that the CONTRACTOR will track, monitor and report performance criteria to CLIENT in agreed upon ways, on agreed upon timelines, to keep CLIENT informed of performance progress. CONTRACTOR's failure to meet performance or quality criteria with regards to the Materials and/or Services being provided under the MSA or any SOW will be communicated to the CONTRACTOR with 30 days to remedy the failure to meet the performance criteria. If SLA targets are not being attained, and/or at CLIENT's request, the CONTRACTOR will provide additional management resources to support operations. CONTRACTOR will notify the CLIENT Vendor Manager immediately by telephone and via e-mail in accordance with the process indicated in the SOW. This Section shall not preclude other remedies available to the Client.

- 12. Changes.** Either Party may request a change in the event of actual or anticipated change(s) to the MSA or any SOW. A change will take the form of a Change Order or an Amendment (together referred to herein as Change Documents). A Change Order will be the vehicle for communicating change to a requirements document (generally an SOW). An Amendment will be the vehicle for communicating change to the Agreement's legal terms and conditions (regardless of whether those terms and conditions are applicable to all or to only select SOWs). Both Parties must mutually agree to the content in a Change Document, except as otherwise explicitly indicated herein. The need for a Change order or an Amendment shall be, in any individual circumstance, in the discretion of PHEAA.

The following provides a detailed process to follow if a change is required.

- a) The Change Document must describe the change, the rationale for the change and the effect the change will have on the Deliverables, project schedule, charges, or the project. All Change Documents must specify required response times and

associated dependencies, and will be contained in a Project Change Log appendix, detailing the cumulative history, disposition, and filenames of previous changes to the MSA.

- b) Both Project Managers will review the proposed change and approve it for further investigation or reject it. Contractor will specify any charges for such investigation. Authorization of the request must come from the PHEAA Project Sponsor, and may require review by PHEAA's Chief Counsel to determine if an Amendment to the MSA may be needed to account for and document the change. If the investigation is authorized by PHEAA, the Parties' Project Managers will sign an approval permitting the CONTRACTOR to invoice PHEAA for the investigation fees. The investigation will determine the effect that the implementation of the change will have on price, schedule and other terms and conditions of the MSA and/or the SOW.
- c) Change Order: The Change Order must describe the change, the rationale for the change and the effect the change will have on the Deliverables, project schedule, charges, or the project. All Change Orders must specify required response times and associated dependencies, and will be contained in a Project Change Log appendix, detailing the cumulative history, disposition, and filenames of previous Change Documents.
- d) Amendment: The Amendment may contain information otherwise found in a Change Order, in addition to changes to legal terms and conditions. The Amendment must describe the change(s) to legal terms and conditions. Unless otherwise specifically indicated, changes brought about by an Amendment shall be applicable to all then-existing and all future SOWs.

Absent a Change Document signed by the Parties, Contractor shall not be bound to perform any additional services beyond what is required in the MSA and / or the SOW. No work may begin under a Change Document until the Change Document's Effective Date. The Parties agree to negotiate all change requests expeditiously and in good faith. The Parties further agree that Contractor may at its discretion undertake and accomplish tasks of a *de minimis* nature necessary to perform its obligations under any SOW at no additional cost and without requiring the execution of a Change Order.

13. Contractor's Delivery. Contractor shall provide the Services and deliver any Deliverables to CLIENT pursuant to the applicable time frame and methods/format set forth in each SOW.

14. Personnel Matters. Subject to applicable Law, Contractor shall, or shall cause an Affiliate of Contractor to, offer the PHEAA employees assigned to this process on the date of the issuance of the CLIENT-permitted notification the opportunity to interview to become Contractor employees. The Parties understand that this is not a guarantee of employment. After a date as indicated by the CLIENT, the Contractor shall issue an appropriate notification to all potential Contractor employees explaining the wages and benefits being offered by Contractor which may differ from their current wages and benefits. Contractor shall follow all applicable

labor laws.

15. Compliance, Confidentiality, Security, and Delivery and Protection of Source Materials and/or Equipment.

- a. **General.** The Contractor acknowledges and understands the paramount importance of compliance and information privacy and security to the performance of any Services and to the provision of any Deliverables under this MSA or any SOW. The Contractor must at all times observe and comply with applicable federal, state, or local laws, ordinances, decrees and regulations, and PHEAA policies existing at the time of or enacted subsequent to the execution of this MSA and any SOW. Further, the Contractor shall maintain the highest standards of integrity in the performance of this Agreement.

The provision of all resources, information, and access by Client is contingent upon Contractor's agents, employees, subcontractors, officers and directors who are working on or privy to the information or materials received as a result of this MSA or any SOW meeting requirements for access, in accordance with this MSA or any SOW, including the but not limited to the MMNDA, PHEAA's Federal Information Security Management Act controls, and PHEAA's Federal Student Aid Authority to Operate as it is interpreted by PHEAA.

The Contractor shall not disclose to others any information gained by virtue of this MSA or any SOW. Any breach of confidentiality may result in immediate termination of this Agreement, suspension or debarment from doing business with the Commonwealth of Pennsylvania, and other action as appropriate and necessary. The Contractor is responsible for any additional costs to PHEAA as a direct result of termination of this Agreement for breach.

Contractor shall obtain and pay for all necessary Federal, state and local licenses and permits necessary to enable it to perform under this MSA and any SOW.

- b. **Access to Source Material or Equipment.** Contractor shall only permit access to the Source Materials and/or any CLIENT Equipment to those employees of Contractor who are subject in writing to the same covenants of confidentiality and intellectual property protection as required under this MSA and any Statement of Work made a part hereof.
- c. **Duties for Handling.** Contractor shall (a) identify all Source Materials and/or CLIENT Equipment as the property of CLIENT, until they are confidentially destroyed as per the related Statement of Work ; (b) safely store the Source Materials and any CLIENT Equipment at all times when not in use in accordance with the storage instructions in the applicable Statement of Work ; and (c) deliver the Source Materials and any CLIENT Equipment to CLIENT upon the earlier of (i) request of CLIENT, (ii) termination of the Statement of Work for which the Source Materials and/or CLIENT Equipment were used, or (iii) termination of this MSA.

- d. **Contractor's Data and Fraud Protection.** In addition to the safe handling duties and confidentiality obligations described and required under this MSA, Contractor shall undertake its commercially best efforts to provide, and shall provide, complete and competent security systems to protect any and all data received, created, developed and/or maintained by Contractor in the performance of its duties under this MSA, in whatever form, whether in electronic or non-electronic form or format. Contractor's responsibility under this security obligation shall include (without limitation):
- i. Operational computer virus and firewall systems and protocols to protect against theft or damage caused by persons, entities or things outside Contractor's direct supervision and/or control;
 - ii. Operational recovery systems for all network and stand-alone computer and/or storage systems used by Contractor for performance of any part of Contractor's services under this MSA;
 - iii. Operational building fire, security and alarm systems protecting Contractor's premises against theft or damage caused by accidents, persons, entities or things outside Contractor's direct supervision and/or control;
 - iv. Criminal history background checks, at the expense of the Contractor, specified in the SOW on each of Contractor's employees or representatives performing any part of Contractor's services under the related SOW.;
 - v. Written agreements or contracts with all employees, agents and representatives of Contractor containing at least contractual covenants against violation of any of Contractor's duties of confidentiality and non-disclosure under this MSA.
 - vi. Employee/Contractor systems, controls and procedures guarding against theft, fraud and/or embezzlement.

Additional security requirements, as applicable shall be included in individual SOWs.

Where the services are being performed on site at a PHEAA-owned or PHEAA-operated location, certain security services may be provided by PHEAA. In such a case, the Parties' respective security responsibilities shall be delineated in a particular SOW. Where the owners of the security responsibilities are not explicitly delineated in a SOW, the duties are the responsibility of the Contractor.

16. Right of Inspection and Accounting. CLIENT shall at any time have the right, upon reasonable prior notice to Contractor, either through CLIENT or CLIENT representative, (a) to reasonably gain access to the Source Materials, (b) to reasonably monitor, question and/or interview employees and/or representatives of Contractor performing Contractor's Services and/or duties under this MSA, (c) to enter upon and reasonably inspect Contractor's premises where performance of Contractor's Services and/or duties under this MSA is or has been conducted at any time during the pendency of this MSA, and/or (d) to enter upon and reasonably inspect Contractor's data and fraud protection controls required under the provisions of the foregoing Sub-Section 12 of this MSA. As part of, and without limitation to any such access,

questioning and/or inspection, CLIENT may reasonably request from Contractor an accounting of Contractor's records and/or information directly pertaining to Contractor's performance of its duties and obligations under this MSA.

17. Protection from Liens and Encumbrances. Care of Client Property. Contractor covenants and agrees to keep all Source Material and CLIENT real and personal property provided to Contractor under this MSA free of all liens, claims, encumbrances and interests of third Parties, and Contractor shall be responsible for any and all legal costs and disbursements, including reasonable attorney fees, as may be required by CLIENT to remove any lien or encumbrance asserted upon any part for the Source Material and/or CLIENT Equipment, or to otherwise recover legal title and/or possession of said Source Material or CLIENT Equipment upon adverse order or seizure of same.

Contractor further covenants and agrees to comply with all CLIENT rules and policies regarding the use of, or entry on to, the CLIENT's real and personal property, which rules and policies shall be considered an enforceable part of this MSA and any SOW. Contractor further covenants and agrees that it shall treat, and shall instruct its employees, subcontractors, agents, etc., that they shall treat, the real and personal property of the CLIENT with the care with which it / they would treat Contractor's own property, which shall in no case be less than reasonable care.

18. Additional Obligations.

(a) **Performance Reviews.** CLIENT shall have the option, at its sole discretion, to give notice from time to time to Contractor requesting formal review and documentation as to the quality and timeliness of Contractor's performance under this MSA and any SOW made a part hereof.

(b) **Designated Contact Person.** Each Party shall designate one person as their designee for the purposes of communications and information exchange in relation to the performance by the Parties of their respective obligations hereunder, and which designee shall be identified in writing in the SOW. The Parties shall use their respective designee as the main contact for any issues arising under the SOW. In addition, Contractor agrees that Contractor's designee shall be a qualified person who will be available during normal working hours to answer questions from any CLIENT employee regarding any of the Services being performed hereunder. Contractor shall return all CLIENT calls within 24 hours of their receipt (unless such 24 hour period expires on a weekend or nationally recognized holiday, in which event the 24 hour period will be extended until the end of the next Business Day). Either Party may change its designee from time to time upon written notice to the other Party.

19. Payment for Services.

a. **CLIENT's Obligation to Pay.** Subject to the terms and conditions of this MSA, in consideration for Services rendered by Contractor to or on behalf of CLIENT hereunder which are delivered and accepted per requirements and specifications

to CLIENT, CLIENT shall pay Contractor the fees for Services rendered and Materials delivered as specified in the applicable Statement of Work.

- b. Assignment Hours and Location. In the event that the Parties agree that the fees for performance of Services hereunder shall be calculated on time and materials basis, the billable Services to be provided by CONTRACTOR are anticipated to consist of 5 person-days each calendar week, CLIENT holidays excluded, and shall be performed only within the Assignment Location specified in the SOW and during the time periods within CONTRACTOR's normal business hours. Services in excess of 40 hours per week ("Overtime") shall be billable only if previously approved by the CLIENT. If under federal or state laws or regulations the CONTRACTOR employee is eligible for Overtime pay rates higher than the hourly fee then, prior to the commencement of Services, CONTRACTOR must provide CLIENT with written documentation of such eligibility.
- c. Reimbursement of Expenses. If pre-approved by CLIENT in an applicable SOW, CLIENT will reimburse CONTRACTOR for reasonable and verifiable Out-Of-Pocket expenses in accordance with PHEAA's PHEAA's Vendor Travel and Expense Policy which is attached hereto and made a part hereof as Exhibit 4. Exhibit 4 may be updated for prospective application by PHEAA upon notice to CONTRACTOR from time to time.

20. Invoicing. Contractor shall invoice CLIENT in US Dollars in accordance with the provisions of each Statement of Work, including an itemization of all fees, costs and expenses due and owing. Contractor shall invoice PHEAA as set forth in the applicable SOW and shall send such invoice to the following address: PHEAA, Attn: Accounts Payable, P.O. Box 2254, 1200 North 7th Street, Harrisburg, PA 17102, or otherwise as agreed upon by the Parties.

Time for Payment. All properly submitted and approved invoices shall be paid by CLIENT in US Dollars within thirty (30) days after receipt of a correct and proper invoice. Interest for late payments may be paid where permitted by, and computed at a rate determined by, the Commonwealth of Pennsylvania Secretary of Revenue. Payments should not be construed by Contractor as acceptance of equipment, goods, materials, Deliverables, or supplies. PHEAA may withhold payment for charges which lack supporting information or documentation. PHEAA may withhold payment if and while Contractor is in material breach of the Agreement and/or SOW. Payment may be delayed by PHEAA if the payment amount on Contractor's invoice is not based upon the price(s) stated in the applicable SOW. Invoices shall contain, at minimum, the Agreement Number ME 17-076, item number, description of the Deliverables, applicable sizes, quantities, and unit pricing, dates and extended totals. If applicable, any applicable shipping costs shall be stated separately in the SOW.

21. Right to Accounting. Contractor shall keep complete and accurate records of the performance of Services hereunder and the associated fees, costs and expenses charged to CLIENT hereunder. During the term of this MSA, and for three years after termination

of this MSA or any SOW, upon reasonable notice and no more often than once each calendar quarter, Contractor shall permit CLIENT, its Clients, or their respective representatives, at CLIENT's expense, to examine such records for the purposes of and to the extent necessary to verify any accounting and amounts due under this MSA and to verify Contractor's business processes in performing the Services. Adjustment shall be made by the proper Party to compensate for any errors or omissions disclosed by such audit. All adjustments must be made within 30 days of discovery.

Minimum Wage Increase. Should there be an increase in the minimum wage rate in any of Contractor's processing locations, or should the nature of the work being performed by Contractor in accordance with the terms of this Agreement change due to CLIENT requirements, (i.e. a change in the work schedule, a change in the processing rules, a change in the processing workweek, etc.) Contractor shall have the right to initiate a Change Order per Section 12 – Changes.

22. Taxes. Contractor acknowledges that PHEAA is an instrumentality of the Commonwealth of Pennsylvania and is exempt from local and state and local sales and use tax. PHEAA's tax identification number is 23-1693362.

23. Warranties and Representations

(a) Mutual Representations and Warranties. Each of the Parties represents, warrants and covenants to the other that:

- i. It is a legal entity duly organized, validly existing and in good standing under the laws of the state or country of its incorporation or formation and has the legal power to own or lease its assets and properties and to carry on its business as now being and heretofore conducted;
- ii. The execution, delivery and performance of this Agreement has been duly authorized; and
- iii. This Agreement is the legal, valid and binding obligation of such Party, enforceable in accordance with its terms.

(b) Contractor's Additional Representations and Warranties. Contractor further represents and warrants to CLIENT that:

- i. Quality of Services. Contractor's Services to be provided hereunder shall (i) be performed by careful, efficient, and qualified workers, and in a professional and workmanlike manner, (ii) strictly conform to the applicable requirements and specifications in the MSA and each SOW and to the standards, and using the best practices, applicable in the field, and (iii) be performed in accordance with all applicable laws and regulations;
- ii. Quality of Deliverables, Processes, and Services. Contractor's Deliverables, processes, and Service results shall (i) strictly conform to the requirements and specifications of the MSA and each SOW, including the applicable Performance Matrix; (ii) be

free from defects in design, materials and workmanship (except to the extent that CLIENT specifies the design in the applicable SOW). (iii) be delivered free and clear of any lien or encumbrance, (iv) not violate any law, statute, ordinance, regulation or privacy rights of any third party, and (v) not contain any time bombs or other computer programming routines, viruses, Trojan horses, or worms that damage, detrimentally interfere with, surreptitiously intercept, or appropriate any system, data or personal information of CLIENT or of any of its Clients, or that are intended to do so; (d) Contractor shall only use the Source Materials for performance of the Services as indicated in the Agreement, including the applicable SOW, and shall comply with all restrictions on use set forth in the Agreement, including the applicable SOW ; and (e) neither the Services nor the Deliverables, nor their use as contemplated herein shall infringe the patents, copyrights, trademarks, trade secrets or other intellectual property rights of any third party.

- iii. The Contractor hereby represents and warrants to CLIENT that the Contractor has the capability, expertise and means required to provide the Services and Deliverables
- iv. The Contractor hereby represents and warrants to CLIENT that the Contractor will not cause, directly or indirectly, a disruption of CLIENT'S operations.

- (c) Contractor warrants that it will correct any material deficiencies in any Deliverable(s) or delivered Services during the period of days following actual or deemed Acceptance as agreed-upon in any individual SOW. If no period is agreed upon in a SOW, the period shall default to 120 days. This warranty shall be available in cases in which the CLIENT notifies Contractor in writing of such deficiency and specifies in reasonable detail the nature of the deficiency or its material effect, and provided further that Contractor shall be afforded a commercially reasonable period of time to correct such deficiency.

24. **Time of Essence.** CONTRACTOR understands and agrees that time is of the essence in meeting the requirements and performing the Services set forth herein and will provide CLIENT with periodic updates.

25. **Notice of Adverse Claims and/or Events.** Contractor covenants and agrees to immediately notify CLIENT upon the occurrence of any claim, action, summons, lawsuit, order, subpoena, writ, warrant, injunction, stay, proceeding, event, relief, data breach, accident, disaster or calamity of any kind that (i) causes, threatens and/or more likely than not has the potential to cause Contractor to become insolvent, (ii) represents an accusation or finding of criminal activity attributed in any part to Contractor, its owners,

directors or officers, and/or (iii) materially impacts Contractor's ability to satisfy and perform its affirmative obligations, representations and warranties as set forth under this MSA, or (iv) must be reported in accordance with law or policy, as determined by the CLIENT, in order for CLIENT to remain compliant with its own statutory, regulatory, contractual and policy requirements. Contractor shall also immediately notify CLIENT upon any aforementioned occurrence where the occurrence represents an accusation or finding of criminal activity or of a civil wrong attributed in any part to CLIENT, so that CLIENT may object to the occurrence as necessary and appropriate.

26. Reports and Accounting

a. Onsite Audits

CLIENT may conduct audits to determine that CONTRACTOR procedures for confidentiality are in place and functioning properly and will include, but not be limited to, such procedures as:

- i. Employee rules of conduct
- ii. CONTRACTOR work flow procedures
- iii. Secured access to facilities
- iv. Employee confidentiality agreements
- v. Employee background research
- vi. Computer/image security
- vii. Compliance with on-site destruction of documents

Where Contractor is located at a CLIENT-owned or CLIENT-controlled facility, the CLIENT's and CONTRACTOR's respective responsibilities will be memorialized in the SOW and accounted for in the audit. Where the duties are not specified in a SOW, the duties are the responsibility of the Contractor. CLIENT will have access to such records for purpose of audit, either through its own representatives or through an accounting firm selected and paid for by CLIENT. Notwithstanding the intended breadth of CLIENT's audit rights, CLIENT shall not be given access to (i) the proprietary information of other CONTRACTOR customers or contracts, or (ii) CONTRACTOR locations that are not related to Services CONTRACTOR performs for CLIENT. CONTRACTOR shall be required to cooperate with or grant access to any direct competitor of CONTRACTOR in the data entry services industry where that competitor has signed a non-disclosure agreement with the CLIENT and is working on behalf of the CLIENT.

In performing audits, CLIENT shall use commercially reasonable efforts to avoid unnecessary disruption of CONTRACTOR's operations and unnecessary interference with CONTRACTOR's ability to perform the Services in accordance with the performance criteria and accuracy levels.

On-site audits conducted by CLIENT will comply with all applicable Federal, State and Local regulatory constraints. The expectation is that CLIENT will focus on CONTRACTOR employees, facilities, records, practices, and procedures, and their compliance, accuracy, and effectiveness.

26. Annual Due Diligence

CLIENT will request, and CONTRACTOR will provide no more than annually, certain documents which evidence the viability of the CONTRACTOR and evidence of operational and security controls. Documents will include, but may not be limited to:

- i. IT Security Assessment (including relevant documentation)
- ii. Compliance Assessment
- iii. Financial Assessment
- iv. Business Continuity Process (BCP) Assessment (including relevant test results)
- v. Certificate of insurance
- vi. Review of Compliance Training
- vii. SSAE18 report (if applicable and at CLIENT expense)
- viii. Due Diligence Information on any relevant Subcontractors

27. Document Storage, Retrieval and Destruction

At CLIENT's option, the CONTRACTOR shall store paper documents for a period of thirty (30) days. After completion of the storage period, the CONTRACTOR shall perform on-site confidential shredding of the paper documents with acceptable security as defined by CLIENT. Additional requirements, as applicable, shall be listed in a SOW.

28. Business Continuity

In the event the CONTRACTOR is unable to perform processing services as set forth in this agreement for any reason, including physical damage to equipment and/or facilities, equipment malfunction, telecommunications links and devices or software failure, the CONTRACTOR shall restore production capability within forty-eight (48) hours of the point of failure. All images and programs shall be restored to the version in place at the point of failure. To ensure capability, the CONTRACTOR will implement the following procedures and systems:

- Maintain capability of performing all facets of CLIENT work at a minimum of two (2) locations. During declared event, may be impacted with agreement of both CLIENT and CONTRACTOR.
- Maintain Disaster Recovery procedures to transport the mail to the back-up location in the event of a disaster.
- Ensure that a process is in place to deploy all software application updates to both the primary location and the backup location.
- Maintain computer and imaging hardware redundancy in the form of file servers, scanners, and workstations for routine computer malfunctions.
- Test Disaster Recovery Plan at least annually and provide written notification to CLIENT of test plan and results.

Where the services are being performed on site at a PHEAA-owned or PHEAA-operated location, certain business continuity services may be provided by PHEAA. In such a case, the Parties' respective business continuity duties shall be memorialized in a particular SOW. Where the duties are not specified in a SOW, the duties are the responsibility of the Contractor.

a. **Severity I, II, and III Definitions, Response Times, and Resolution Times**

i. **Severity Level I:** Defined as something that does not, and has no potential to, impact CLIENT productivity (examples include, but are not limited to, downtime, for other than standard scheduled maintenance, for reporting websites). In the instance that CONTRACTOR experiences system issues (e.g. hardware failure, downtime, loss of connectivity originating inside CONTRACTOR's network, blackouts) that impact the ability to fulfill the requirements set forth in this Agreement. CLIENT's Vendor Management Team Contact or designee will be notified by a CONTRACTOR Manager within three (3) hours of CONTRACTOR's identification of the occurrence. In the case that the problem persists for greater than five (5) hours, the CONTRACTOR's Senior Management team (SMT) and CLIENT's Vendor Management Contact or designee will be notified. **Severity I Resolution time: Not to exceed 12 hours**

ii. **Severity Level II:** Defined as something that negatively impacts, or has the potential to negatively impact, CLIENT productivity (examples include but are not limited to, downtime other than for standard scheduled maintenance, for applications and applications related websites). CONTRACTOR will respond to a Severity Level II problem within 30 minutes following notification by CLIENT or CONTRACTOR notification to CLIENT should CONTRACTOR recognize the problem first. CLIENT or CONTRACTOR, whichever is applicable, must identify at the time of the call that the problem is Severity Level II. **Severity II Resolution time: Not to exceed 24 hours**

iii. **Severity Level III:** Defined as a sustained outage that necessitates the movement of mail and/or data entry processing from a primary production facility to a secondary location or hot site. **Severity III Resolution time: Not to exceed 48 hours**

b. At CLIENT's request, CONTRACTOR may be required to participate in CLIENT's annual BCP Testing. CLIENT is responsible for notifying CONTRACTOR of when testing will occur, the scope of the test, and any other pertinent details for planning purposes.

29. **Project Management**

After the Effective Date, the Parties' Project Managers will finalize the Project Plan. The mutually-agreed upon final version of the Project Plan shall, and hereby does, become an enforceable part of this MSA, subject to change by further mutual agreement of the Project Managers.

All project management tasks will be tracked and updated, as needed. The CONTRACTOR and CLIENT project teams will meet collectively, as needed, for project planning meetings. The CONTRACTOR will be fully responsible for maintaining the proper system documentation for their programming applications to support CLIENT products.

The Parties will mutually agree upon formal templates to use for standard project management planning (i.e.; Subsidiary Documents), to include but not limited to: Risk/Issue Management, Communication Plan, Change Management, Financial Management, Status Reporting, etc. The Parties will also agree upon standardized meetings, and storage of documents, minutes, etc. Subsidiary Documents, upon mutual approval in writing by both Parties' Project Managers, become and enforceable part of this MSA, subject to change by further mutual agreement of the Project Managers.

Notwithstanding the foregoing, to the extent that the Project Plan and its Subsidiary Documents conflict with this MSA or the applicable SOW, this MSA and the SOW shall control.

30. Ownership, Development and Protection of Intellectual Property.

Contractor agrees to disclose in writing promptly to PHEAA any and all Inventions, whether or not patentable and whether or not reduced to practice, conceived, or developed by Contractor during his or her engagement with PHEAA, either alone or jointly with others, that relate to or result from the actual or anticipated business, work, research, investigations, products, or Services of this MSA or any SOW, or that result to any extent from use of PHEAA's premises or property. Contractor specifically acknowledges that Contractor was selected by PHEAA in part to invent any Inventions described in this Section.

Contractor acknowledges and agrees that PHEAA is the sole owner of any and all property rights in all Inventions referred to in this Section including, but not limited to, the right to use, sell, license, or otherwise transfer or exploit the Inventions and the right to make such changes in them and the uses thereof as PHEAA may from time to time determine.

Contractor shall grant and hereby grants and assigns to PHEAA, without further consideration, Contractor's entire right, title, and interest (throughout the United States and in all foreign countries), free and clear of all liens and encumbrances, in and to all Inventions referred to in this Section, which shall be and hereby are the sole property of PHEAA, whether or not patentable, to the fullest extent possible by law.

Without limiting the generality of the foregoing, Contractor hereby assigns and transfers in favor of PHEAA or its nominee Contractor's interest in any of the Inventions, writings, or other works covered by this Agreement. Contractor shall execute all papers, render all assistance, and

perform all lawful acts that PHEAA considers necessary or advisable for (a) the preparation, filing, prosecution, issuance, procurement, maintenance, or enforcement of patents, trademarks, copyrights, and other protections, and any applications for any of the foregoing, in the United States or in any foreign country for any such Inventions, writings, or other works and (b) the transfer of any interest Contractor may have therein. Contractor hereby appoints each of the current and future officers of PHEAA as Contractor's attorney-in-fact during such time as each is an officer to PHEAA to execute necessary documents on behalf of Contractor for this purpose.

Contractor hereby acknowledges and agrees that all writings and other works that may be copyrighted (including computer programs) and that are related to the present, planned, or reasonably anticipated business of PHEAA and are prepared by Contractor during his or her engagement with PHEAA shall be, to the extent permitted by law, deemed to be works for hire, with the copyright automatically vesting in PHEAA. To the extent that such writings and works are not works for hire, Contractor hereby waives any and all "moral rights" in such writings and works and agrees to assign, and hereby does assign, to PHEAA all of Contractor's right, title, and interest, including copyright, in such writings and works.

Contractor further agrees to reasonably cooperate with PHEAA, both during and after engagement, in obtaining and enforcing patents, copyrights, trademarks, and other protections of PHEAA's rights in and to all such Inventions, writings, and other works. Contractor shall execute any and all papers and documents required to vest title in PHEAA or its nominee in any such Inventions, writings, other works, patents, trademarks, copyrights, applications, and interests.

As used in this Agreement, "Background Technology" means anything provided by Contractor to PHEAA in connection with any work done by Contractor for PHEAA that is distinct from (1) an Invention generated by, created, performed or developed by Contractor in connection with work done by Contractor for and with PHEAA (as defined in this Section), or (2) any previous invention. Contractor hereby grants to PHEAA a nonexclusive, royalty-free, irrevocable, perpetual, worldwide, transferable license to make, have made, use, offer to sell, sell, import, copy, modify, create derivative works based on, distribute, sublicense (through multiple tiers), display, perform, and transmit the Background Technology, to the extent necessary to enable PHEAA to exercise all of the rights assigned to PHEAA under this Agreement. All Background Technology shall be and remain the property of Contractor, unless otherwise agreed to herein, or in writing, by Contractor. This Section shall survive any termination or expiration of this Agreement.

31. PATENT, COPYRIGHT AND TRADEMARK INDEMNIFICATION.

CONTRACTOR hereby represents and warrants that it has all the right, title and interest in the Services and any materials produced by CONTRACTOR and/or any CONTRACTOR employees. CONTRACTOR represents and warrants that the Services performed and/or materials produced by CONTRACTOR will not violate any publicity or privacy right, patent, copyright, trade secret or other proprietary or intellectual property right or confidential relationship of any third party.

CONTRACTOR shall at its own expense indemnify, defend, settle and hold harmless CLIENT and its officers, agents, employees, customers and all persons claiming under CLIENT from and against any and all claims, actions, injunctions, damages, losses, liabilities, costs and expenses (including legal fees, costs and expenses) arising in any way out of any claim, suit, proceeding or allegation that the Services and/or materials produced by CONTRACTOR infringe upon or violate patents, copyrights, trade secrets or other proprietary or intellectual property rights of a third party, whether or not such claim, suit, proceeding or allegation is successful. CLIENT agrees to send CONTRACTOR written notice of any claim, suit, proceeding or allegation relating to such infringement promptly after CLIENT receives written notice of the same. Following such notice of a claim or of a threatened or actual suit, CONTRACTOR shall, upon written notice to CLIENT, at CLIENT's election and CONTRACTOR's expense (a) procure for CLIENT the right to continue using such Services and/or materials or (b) replace or modify same so that it becomes non-infringing. If neither option is available to CONTRACTOR through the use of commercially reasonable efforts CLIENT will cease to use Services, and will return such materials to CONTRACTOR, and CLIENT will receive a refund of the fees paid to CONTRACTOR under the Agreement to reflect the fact that CLIENT no longer has the use of such Services or materials. In advance of the date such a cessation is likely to occur, the CONTRACTOR and CLIENT shall consult to determine how the work under this MSA and any SOW may continue with minimal disruption. Where the work under this MSA or any SOW cannot continue in accordance with requirements, the cessation shall be considered an incident of default under this Agreement.

There shall be no limitation of liability for CONTRACTOR with regard to CONTRACTOR's obligation to indemnify CLIENT as provided for and in accordance with this Section 11, *Patent, Copyright and Trademark Indemnification*. This provision shall survive any termination or expiration of this Agreement.

32. Use and Disclosure of Valuable Property and Confidential Information.

- a. Valuable Assets. Each of the Parties is aware and acknowledges that the other Party to this MSA has accumulated proprietary and/or trade secret information (not generally known to others), about the industry and market for the Parties' respective businesses that is of unique value in the conduct and growth of said Party's business and may not be used outside of this Agreement or with other parties.
- b. Access to Confidential Information. The Parties agree the treatment of Confidential Information shall be pursuant to this MSA, including the MMNDA.
- c. The Parties' obligations under this Section shall extend to the non-publicizing of any dispute arising out of this MSA, unless otherwise required by a court of competent jurisdiction.

33. Location, Status, and Disposition of Materials and Data

- a. All materials and data, including all Confidential Information, must be stored within the United States.

- b. The Contractor shall be responsible for maintaining the privacy, security and integrity of materials, equipment, and data in the Contractor's or its subcontractors' possession.
- c. All materials and data shall be provided to the CLIENT upon request, in a form acceptable to the CLIENT and at no cost.
- d. Any materials and data shall be destroyed by the Contractor at the CLIENT's request.
- e. Any materials and data shall be held for litigation or public records purposes by the Contractor at the Commonwealth's request, and in accordance with the security, privacy and accessibility requirements of this Contract.

34. Data Breach or Loss

- (a) Contractor shall comply with all applicable information and data protection, security, privacy and breach notification laws.
- (b) For information and data, including all Confidential Information, in the possession, custody, and control of the Contractor or its employees, agents, and/or subcontractors:
 - (i) The Contractor shall report unauthorized access, use, release, loss, destruction or disclosure of information and data ("Incident") to PHEAA within **two (2) hours** of when the Contractor knows of or reasonably suspects such Incident, and the Contractor must immediately take all reasonable steps to mitigate any potential harm or further access, use, release, loss, destruction or disclosure of such information and data.
 - (ii) Contractor shall provide timely notice to all individuals that may require notice under any applicable law or regulation as a result of an Incident. The notice must be pre-approved by PHEAA. At PHEAA's request, Contractor shall, at its sole expense, provide credit monitoring services at a cost not to exceed \$1,000,000 dollars annual aggregate, to all individuals that may be impacted by any Incident requiring notice.
 - (iii) Contractor shall be solely responsible for any costs, losses, fines, or damages incurred by PHEAA due to Incidents.
- (c) As to data fully or partially in the possession, custody, or control of the Contractor and PHEAA, the Contractor shall diligently perform all of the duties required in this **Section 31** in cooperation with PHEAA, until the time at which a determination of responsibility for the Incident, and for subsequent action regarding the Incident, is made final.

35. **Insurance.**

a. **General.** The Contractor shall maintain at its expense and require its agents, contractors and subcontractors to procure and maintain, as appropriate, and at a minimum, the following types and amounts of insurance, issued by companies acceptable to PHEAA and authorized to conduct such business under the laws of the Commonwealth:

- i. Workers' Compensation Insurance for all of the Contractor's employees and those of any subcontractor engaged in performing Services in accordance with the Worker's Compensation Act, Act of June 2, 1915, P.L. 736, No. 338, reenacted and amended June 21, 1939, P.L. 520, No. 281, as amended, 77 P.S. §§ 1—2708.
- ii. Commercial general liability insurance providing coverage from claims for damages for personal injury, death and property of others, including loss of use resulting from any property damage which may arise from its operations under this Agreement, whether such operation be by the Contractor, by any agent, contractor or subcontractor, or by anyone directly or indirectly employed by either. The limits of such insurance shall be in an amount not less than:

General Aggregate: \$2,000,000
Products/Completed Operations Aggregate: \$2,000,000
Each Occurrence: \$1,000,000
Personal and Advertising Injury: \$1,000,000

Such policies shall be occurrence based rather than claims-made policies. The insurance shall not contain any endorsements or any other form designed to limit and restrict any action by PHEAA as an additional insured against the insurance coverages in regard to the Services performed for or Supplies provided to PHEAA. Products/Completed Operations Coverage must be maintained for a period of at least three (3) years after final payment / completion of work (including coverage for the Additional Insureds as set forth in these Insurance Requirements.

- iii. Professional Liability/Errors and Omissions Insurance in the amount of \$3,000,000, per accident/occurrence/annual aggregate, covering the Contractor, its employees, agents, contractors, and subcontractors in the performance of all services.
- iv. Network/Cyber Liability Insurance (including coverage for Professional and Technology-Based Services Liability if not covered under Service Provider's Professional Liability/Errors and Omissions Insurance referenced above) in the amount of \$3,000,000, per occurrence / \$3,000,000 annual aggregate, covering the Contractor, its employees,

agents, contractors, and subcontractors in the performance of all services. This coverage shall include coverage for third party liability arising out of breach of privacy, inclusive of confidential and proprietary business information, HIPAA violations and other breaches of personally identifiable information and/or protected health information that may arise from their work with this contract. Privacy Breach Notification and Credit Monitoring shall also be included up to the limit of liability.

- v. Comprehensive crime insurance in an amount of not less than \$1,000,000 per claim. This coverage shall include but not be limited to coverage for Employee Theft and the Theft, Disappearance, and Destruction Coverage Part.
- vi. Umbrella coverage in an amount of \$10,000,000.
- b. Certificate of Insurance. Prior to commencing Services under the Agreement, and annually thereafter, the Contractor shall provide PHEAA with a copy of each current certificate of insurance required by this section. These certificates shall contain a provision that coverages afforded under the policies will not be cancelled or changed in such a way to cause the coverage to fail to comply with the requirements of this section until at least 15 days' prior written notice has been given to PHEAA. Such cancellation or change shall not relieve the Contractor of its continuing obligation to maintain insurance coverage in accordance with this section.
- c. Insurance coverage length. The Contractor agrees to maintain such insurance for the life of the Agreement and any SOW.
- d. All insurance shall be procured from insurers permitted to do business in the Commonwealth and have an A.M. Best Rating of at least "A-, Class VIII".
- e. Contractor shall not have a Self-Insured Retention (SIR) on any policy greater than \$50,000, which is the responsibility of the Contractor. If Contractor's policies have a Self-Insured Retention exceeding this amount, approval must be received from PHEAA prior to starting work.
- f. PHEAA shall be added as ADDITIONAL INSURED on all liability policies (except Workers' Compensation and Professional Liability), on a primary non-contributory basis. Each of the Additional Insured's respective directors, officers, partners, members, employees, agents and representatives shall also be afforded coverage as an Additional Insured.
- g. Waiver of Rights of Subrogation: Contractor shall waive all rights of recovery against PHEAA and all the additional insureds for loss or damage covered by any of the insurance maintained by the Contractor.

- h. The Contractor's insurance carriers shall agree to provide at least thirty (30) days prior written notice to PHEAA in the event coverage is cancelled or non-renewed. In the event of cancellation or non-renewal of coverages, it is the Contractor's responsibility to replace coverage to comply with the Agreement requirements so there is no lapse of coverage for any time period.
- i. The amount of insurance provided in the required insurance coverages, shall not be construed to be a limitation of the liability on the part of the Contractor.

36. Indemnification and Hold Harmless.

- a. Duty to Defend and Hold Harmless. Contractor shall defend, indemnify and hold harmless PHEAA, its officers, agents, directors, clients, employees and affiliated companies (collectively hereinafter referred to as the "PHEAA Indemnified Party") from and against any and all liabilities, damages, losses, settlements, claims, allegations, actions, suits, penalties, fines, costs or expenses (including, without limitation, reasonable attorney fees and expenses) incurred by or asserted against any PHEAA Indemnified Party, to the extent arising from or occurring as a result of a claim or demand made by a third party against any PHEAA Indemnified Party because of or arising out of any (a) breach of Contractor's representations or warranties; (b) breach by Contractor of its confidentiality obligations; or (c) the performance of, including any actions or omissions of, Contractor or its employees or agents, subcontractors, directors and officers, under this MSA or any SOW.
- b. Notice Required. Any PHEAA Indemnified Party shall give prompt notice of any claim for which it requires indemnification and for infringement claims shall give sole control of the defense of such claim to Contractor, except that any PHEAA Indemnified Party may engage its own counsel, at its own expense, to monitor the defense of any such matter.
- c. Retention of Experienced and Competent Legal Counsel. Any and all defense provided by Contractor under this Section shall include retention of suitable and competent legal counsel for PHEAA having actual trial expertise specifically involving the subject matter giving rise to Contractor's duty to defend under this Section.
- d. Contractor's Liability for Attorney Fees for Breach of Duty. Any failure by Contractor, after proper notice having been given, to immediately appear and assume the defense of the PHEAA Indemnified Party under its duty to defend and hold harmless assumed hereunder shall entitle the PHEAA Indemnified Party to retain legal counsel to appear and provide such defense, and to otherwise seek to recover from Contractor the legal fees and expenses reasonably incurred by PHEAA after such notice in providing its own defense.

- e. CLIENT does not have the authority to and shall not indemnify any entity. CLIENT agrees to pay for any loss, liability or expense, which arises out of or relates to the CLIENT's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the CLIENT is established by a court of competent jurisdiction or where settlement has been agreed to by the CLIENT. This provision shall not be construed to limit the CLIENT's rights, claims or defenses that arise as a matter of law or pursuant to any other provision of this MSA or any SOW, and may not be construed as a waiver of the CLIENT's or the Commonwealth of Pennsylvania's sovereign immunity.
- f. Attorney General's Discretion. Nothing herein is intended to or does abrogate the ability of the Commonwealth of Pennsylvania Office of Attorney General to perform its statutory role with respect to legal advice or representation in litigation.

37. **Limitation of Liability**

General. The Contractor's liability to PHEAA under this Contract shall be limited to the greater of \$5,000,000 or the value of all active SOWs under this MSA (including any changes), whichever is greater. This limitation will apply, except as otherwise stated in this **Section 37**, regardless of the form of action, whether in contract or in tort, including negligence. This limitation does not, however, apply to any damages:

- (i) for bodily injury;
- (ii) for death;
- (iii) for intentional injury;
- (iv) for damage to real property or tangible personal property for which the Contractor is legally liable;
- (v) under **Section 31, Patent, Copyright, Trademark and Trade Secret Protection**;
- (vi) under **Section 34, Data Breach or Loss**; or
- (vii) under **the MMNDA**.

The Contractor will not be liable for consequential or incidental damages, except for consequential and incidental damages arising from damages set forth in **Section 37(a)(i)–(vii)**, arising from breaches of representations and warranties, or as otherwise specified in the MSA.

38. **Liquidated Damages**

By accepting this Contract, the Contractor agrees to the performance requirements of this Contract. If a requirement or due date is not met, the failure will interfere

with PHEAA's program. In the event of any such delay, it may be impractical and extremely difficult to establish the actual damage for which the Contractor is the material cause. PHEAA and the Contractor therefore agree that in the event of any such failure by Contractor, the amount of damage shall be the amount specifically set forth in any SOW, or as otherwise indicated in this MSA, and that such amount shall be a liquidated damage. The Parties agree that the Contractor shall pay such amounts as liquidated damages, not as a penalty. Liquidated damages do not preclude the collection of other kinds of damages, but will be credited against those other damages collected for the same failure which exceed the liquidated damages amount.

39. Termination.

- a. This MSA (and all Statements of Work) may be terminated upon the occurrence of any of the events, and in a manner indicated, as follows:
- i. By either Party if the other party shall fail in the punctual payment of any sum due, except a sum which is otherwise subject to a bona fide dispute, and where the failure shall not be cured within thirty (90) business days after receipt of notice that such payment is late, unless a longer cure period is agreed to by the Parties;
 - ii. By either Party upon written notice to the other Party upon the dissolution or insolvency of the other Party, or petition for bankruptcy of Contractor, and/or the appointment of a trustee or receiver in bankruptcy for Contractor; and/or in the event of a petition for bankruptcy of Contractor, which petition is made by a third party and is not withdrawn or dismissed within ninety (90) days after it is made;
 - iii. By CLIENT (PHEAA) for Convenience: The CLIENT may terminate the MSA or any SOW, in whole or in part, without cause by giving Contractor a minimum 30 days' prior written notice (Notice of Termination) whenever the CLIENT shall determine that such termination is in the best interest of the CLIENT. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance is terminated either in whole or in part and the date on which such termination becomes effective;
- b. In the event of termination for Convenience, Contractor shall receive payment for the following:
- i. All Services performed consistent with the terms of the MSA and SOW prior to the effective date of termination;

In the event of termination for Convenience, Contractor and CLIENT shall enter into good faith negotiations in order to reach mutual agreement regarding Contractor's receipt of payment for the following costs. Failure to agree on whether and how much payment will be made for the following costs shall be a dispute which may be handled in accordance with *Section 44* (Dispute Resolution) of this Contract:

1. Actual and reasonable costs incurred by Contractor as a result of the termination of the Contract to include but not be limited to employee severance costs.
2. Actual and reasonable unamortized Contractor costs attributable to the Contract and not reasonably able to be mitigated by the Contractor, including but not limited to: unamortized assets, facility leases, facility improvements, telecom leases and maintenance agreements.

In no event shall the Contractor be paid for any loss of anticipated profit (by the Contractor or any subcontractor), loss of use of money, or administrative or overhead costs.

c. By either Party for Default:

1. The CLIENT may, in addition to its other rights under this MSA or any SOW, terminate this MSA or any SOW in whole or in part by providing written notice of default to the Contractor if the Contractor materially fails to perform any obligations under the MSA or any SOW and does not cure such failure within **30 days** or, if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the CLIENT may agree to in the written notice describing such failure, and diligently and continuously proceed to complete the cure.

Termination in whole or in part may proceed without a cure period where the CLIENT reasonably believes that such termination is necessary to protect the privacy, security, or integrity of any information, or the safety of any person, or to ensure compliance with law or prevent damage or fraud.

In case of full or partial termination for failure to deliver goods/services in accordance with the Agreement terms and conditions, PHEAA, after reasonable oral or written notice within the cure period as possible, may procure them from other sources and hold the Contractor responsible for the actual and reasonable cost of producing substitute equivalent goods/services for the terminated goods/services. This remedy shall be in addition to any other remedies which PHEAA may have.

2. The Contractor may, in addition to its other rights under this MSA or any SOW, and except as to failures addressed under Section 39(a)(i) and (ii), herein, terminate this MSA or any SOW in whole or in part by providing written notice of default to the CLIENT if the CLIENT materially fails to perform any obligations under the MSA or any SOW and does not cure

such failure within 60 days or, if a cure within such period is not practical, commence a good faith effort to cure such failure to perform within the specified period or such longer period as the Contractor may agree to in the written notice describing such failure, and diligently and continuously proceed to complete the cure. Notwithstanding any termination under this Section (a)(iv)(2), or for any other reason, and acknowledging the importance of the services being offered by the Contractor to numerous stakeholders associated with the CLIENT's program, the Contractor shall offer Termination Transition as indicated in Section 39(c), herein, in order to ensure an orderly transition.

- d. Upon any termination of this MSA, in addition to the Parties' other rights and remedies at law and in equity, the Parties shall have the following rights and obligations:
1. All Statements of Work shall terminate as of the effective date of termination of the MSA, unless otherwise agreed in writing by the Parties. SOWs which survive shall continue to be governed by the terms of the MSA. No individual SOW termination shall relieve the Contractor of the obligation to deliver and/or perform on other outstanding SOWs.
 2. Contractor shall follow all of CLIENT's reasonable instructions as to the transition of any Statement of Work(s) not complete as of the effective date of termination;
 3. After delivery to CLIENT of all copies of CLIENT's Confidential Information, Contractor shall return all electronic and paper records relating to CLIENT's Confidential Information, and shall provide CLIENT with a written certification of return and or destruction (if destruction is specifically approved in writing by CLIENT) signed by an officer of Contractor; and
 4. CLIENT shall pay Contractor for all Services performed strictly in accordance with the requirements set forth in this MSA and relevant SOWs, and shall reimburse Contractor for all approved reimbursable expenses incurred prior to the effective date of termination.
- e. Termination Transition. In the case of expiration or termination of this MSA or any SOW for any reason prior to completion of Services or provision of all Deliverables, CONTRACTOR will comply with CLIENT's, or CLIENT's designee's, reasonable directions to affect the orderly transition and migration to CLIENT or CLIENT's designee from CONTRACTOR of all Services and full or partial Deliverables then being performed or addressed by CONTRACTOR or which CONTRACTOR is then responsible for performing under this MSA or any SOW (the "Termination Transition"). CONTRACTOR will assist in the Termination Transition for a period not less than 9 months if required in the discretion of the CLIENT. Any additional

time shall be mutually agreed upon in writing by CLIENT's designee and CONTRACTOR. CLIENT's designee and its employees and agents will cooperate in good faith with CONTRACTOR in connection with CONTRACTOR's obligations under this section and CLIENT's designee will perform its obligations under any approved transition plan developed by CLIENT. CLIENT and CONTRACTOR will develop and submit to CLIENT's designee for approval a transition plan setting forth the respective tasks to be accomplished by each party in connection with the orderly transition and a schedule pursuant to which the tasks are to be completed.

40. **OUTSOURCING.** CLIENT shall have the right to designate one or more representatives as CLIENT's agents(s) for the administration of the Services with the prior written consent of the CONTRACTOR and the receipt of Services under this Agreement from CONTRACTOR. Such a designation shall not adversely affect any of CLIENT's rights under the Agreement and CONTRACTOR shall deal with the designated outsourcer(s) in the same manner and in accordance with this Agreement as it would have dealt with CLIENT.

41. **CONTRACTOR PERSONNEL**

- a) **CONTRACTOR Employees.** If CLIENT reasonably determines that a CONTRACTOR employee who has significant contact with CLIENT or is located at a facility owned or operated by CLIENT is not performing or complying with CLIENT rules and policy in a reasonably satisfactory manner, then CLIENT shall give CONTRACTOR written notice to that effect, requesting that the CONTRACTOR employee be replaced and stating the reason thereof. Promptly after its receipt of such a request by CLIENT, CONTRACTOR shall replace that CONTRACTOR employee as soon as reasonably practicable with a person of suitable ability and qualifications. Nothing in this provision shall be deemed to give CLIENT the right to require CONTRACTOR to terminate any CONTRACTOR employee's employment; rather it is intended to give CLIENT only the right to request that CONTRACTOR discontinue using a CONTRACTOR employee in the performance of the Services for CLIENT.
- b) All CONTRACTOR Employees who are assigned to the CLIENT account or are associated with it in any capacity must be in the United States.
- c) **Safety and Security Requirements.** CONTRACTOR agrees that its employees shall at all times comply with the security and safety regulations in effect upon CONTRACTOR's and CLIENT's premises and maintain security of materials belonging to CLIENT. Each CONTRACTOR employee shall take and abide by PHEAA's internal security training and/or sign any PHEAA-required documents in advance of the performance of any work.
- d) **Background Investigations.** CONTRACTOR agrees that before deploying any CONTRACTOR employee, to provide services to CLIENT, CONTRACTOR will

conduct an investigation of such Deployed Person's background. CONTRACTOR agrees that this investigation will include the following:

- i. To the extent permitted by applicable law, review of appropriate federal, state and local records to determine if the Deployed Person has a criminal record. The investigation shall include all addresses where the Deployed Person resided in the previous seven (7) years, and all employer locations where the Deployed Person was employed. A criminal conviction report shall include the type of offense and whether the listed offense is a felony or where not prohibited by applicable law or regulation, misdemeanor. Where a comprehensive statewide search initially indicates a criminal record the details of which are not available in five (5) business days, county searches will be conducted. County searches shall be provided in all other situations where comprehensive and timely statewide searches are not available
- e) In addition, CONTRACTOR represents that at all times it will comply with all state and federal laws and regulations with respect to maintaining a drug-free workforce and that it will disclose its drug testing procedures to CLIENT upon request.
- f) Notwithstanding the above provisions, CONTRACTOR agrees that it will not deploy any person to provide services to CLIENT whose background investigation reveals that such person has been convicted of any criminal felony involving dishonesty or a breach of trust or that such person has been convicted of any offense under 18 U.S.C. Section 1033 of the Violent Crime Control and Law Enforcement Act of 1994, which section is captioned "Crimes by or Affecting Persons Engaged in the Business of Insurance Whose Activities Affect Interstate Commerce" with the exception that if applicable law limits access to criminal records to the preceding seven (7) years, CONTRACTOR will not be deemed or considered to be in violation of this Section. Such offenses include, by way of illustration and not of limitation, activities by persons in the insurance industry who willfully and materially overvalue any land, property or securities; embezzlement or misappropriation of insurance premiums and other funds; the making of false entries or statements in reports with the intent to deceive another person engaged in the insurance industry; or the use of threat or force in an attempt to corrupt or obstruct administrative proceedings related to the insurance industry.
- g) Upon successful screening of employee candidates, CLIENT will perform 5C Security Clearance process on CONTRACTOR employees.
- h) PHEAA may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor to perform the work/furnish the item(s) and the Contractor shall furnish to PHEAA all such information and data for this purpose as may be requested. PHEAA reserves the right to inspect the Contractor's physical facilities prior to award to satisfy questions regarding the Contractor's capabilities. PHEAA further reserves the right to reject or terminate any SOW or portion of a SOW if the evidence submitted by, or investigations of, such Contractor fails to satisfy PHEAA that such Contractor is properly qualified to carry out the obligations of the Agreement and to complete the work/furnish the item(s) contemplated therein.

42. **SUBCONTRACTORS.** CLIENT recognizes that CONTRACTOR may have the need to utilize subcontractor(s) or supplementary provider(s). Subcontractor(s) or supplementary provider(s) may be utilized only upon prior written approval of CLIENT, which shall not be unreasonably withheld. The cost of any subcontractor(s) and/or supplementary provider(s) employed or retained by CONTRACTOR shall be the sole responsibility of CONTRACTOR and shall, in no instance, be in addition to the fees hereunder. Upon CLIENT's request, CONTRACTOR shall provide a detailed report to CLIENT of the Services rendered by such subcontractor(s) or supplementary provider(s) pursuant to this Attachment. Subcontractors shall be bound by all the provisions of this MSA and all applicable SOWs, including provisions applicable to CONTRACTOR personnel in Section 41 and elsewhere herein, and shall execute all required documents requested by CLIENT.

In the event that Contractor desires to subcontract some part of the Deliverables or Services specified herein, Contractor shall furnish PHEAA the names, locations, qualifications, and experience of their proposed subcontractor(s), as well as a certification that such subcontractor has met applicable requirements, including OFAC requirements. Contractor shall, however, remain fully liable and responsible for the Services performed and Deliverables to be provided by its subcontractor(s) and shall assure compliance with all requirements of the MSA and SOW.

43. **NON-DISCLOSURE STATEMENT.** Each CONTRACTOR or subcontractor employee shall execute a non-disclosure statement prior to performing any work.

44. **Dispute Resolution.**

Where possible, each Party will allow the other a reasonable opportunity to comply before it claims that the other has not met its obligations under this MSA, including any SOW. The Parties will attempt in good faith to resolve all disputes, disagreements, or claims relating to this MSA, including any SOW.

Notwithstanding the determination by the Parties to cooperate in the resolution of disputes in the aforementioned fashion, nothing herein shall preclude either Party from seeking and obtaining recourse in a court of competent jurisdiction at any point in the life of the dispute or in the dispute resolution process.

45. **Miscellaneous.**

- a. **Entire Agreement.** This MSA, including the Exhibits and SOWs, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and replaces any and all prior and contemporaneous agreements whether written or oral between the Parties relating thereto., except to the extent necessary to protect the confidential and proprietary information disclosed thereunder. No modification of this MSA shall be of any force or effect unless made in writing and signed by the Parties hereto. Neither the course of conduct between the Parties nor

If to PHEAA: to the address first written above
Attn: Chief Counsel

- g. Authorization. The individuals executing this MSA for their respective organizations represent that they are duly empowered to bind their respective organizations to the terms and conditions contained herein.
- h. Waivers. No waiver of any of the provisions hereof shall be effective unless in writing and signed by the Party to be charged with such waiver. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, whether of a similar or different nature, unless expressly so stated in a writing signed by the Party to be charged thereby.
- i. Choice of Law. The validity, interpretation or performance, and all rights and obligations of the Parties hereunder, shall be governed by, and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its principles of conflicts of laws.
- j. Choice of Jurisdiction and Venue. PHEAA and Contractor agree that the courts of the Commonwealth of Pennsylvania and the federal courts of the Middle District of Pennsylvania shall have exclusive jurisdiction over disputes under this MSA and the resolution thereof. Any legal action relating to this MSA must be brought in Dauphin County, Pennsylvania, and the parties agree that jurisdiction and venue in such courts is appropriate. Notwithstanding the foregoing, Contractor hereby accepts, consents to and submits to any court having competent jurisdiction over Contractor for the purpose of any injunctive relief as CLIENT may need to obtain against Contractor.
- k. Severability. In the event that any court of competent jurisdiction deems any provision herein to be invalid or unenforceable as applied to any fact or circumstance, its invalidity shall not affect the validity of any other provision of this MSA or of the same provision as applied to any other fact or circumstance, but this MSA shall, to the maximum extent permissible by law, remain in full force and effect and any invalid and unenforceable provisions shall be deemed, without further action on the part of the Parties hereto, modified, amended and limited to the extent necessary to render the same valid and enforceable.
- l. English Version to Control. In the event that a copy of the MSA is translated into another language, the official version shall be the English language version, which shall prevail in all instances. All official correspondence and communications between the Parties under the MSA shall be in the English language.
- m. Headings and Captions. Section headings or captions contained in this MSA are inserted for convenience of reference only, shall not be deemed to be a part of this MSA for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.
- n. Counterparts. To facilitate execution, this MSA may be executed in counterparts, and it shall not be necessary that the signatures of each Party appear on each counterpart.

but it shall be sufficient that the signature of each Party appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement.

- o. No Hiring. Both Parties agree that neither will knowingly attempt to entice or hire away each other's employees during the term of this MSA unless otherwise agreed upon by both parties in writing prior to approaching the other party's employee.

- p. Rights and Remedies. For violation of any provisions, PHEAA may terminate this and any other agreement with the Contractor, claim damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those PHEAA may have under law, statute, regulation, or otherwise.

- q. Commonwealth of Pennsylvania Non-Waiver of Sovereign Immunity. Nothing in this entire Agreement shall be read, interpreted or construed as a waiver of the sovereign immunity of the Commonwealth of Pennsylvania.

The remainder of this page left intentionally blank.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this MSA and caused it to become effective as of the date first above written.

CLIENT:

CONTRACTOR:

PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY

DATAMARK, Inc.

By:  _____

By: Matt Lockauer

Title: Sr Vice President and Chief Digital Officer

Title: Vice President

Approved as to form and legality


PHEAA Legal Counsel

Approved as to form and legality

 7/17/18
Pennsylvania Deputy Attorney General

MASTER MUTUAL NON-DISCLOSURE AGREEMENT

This Master Mutual Non-Disclosure Agreement ("Agreement") is entered into as of this 8th day of September, 2016 by and between the Pennsylvania Higher Education Assistance Agency, a public corporation and governmental instrumentality organized under the laws of the Commonwealth of Pennsylvania d-b-a American Education Services ("AES-PHEAA"), having a principal business office at 1200 North Seventh Street, Harrisburg, Pennsylvania 17102-1444, and Datamark, Inc., a Texas corporation ("Datamark, Inc."), having a principal place of business at 123 West Mills Avenue Suite 400, El Paso, TX 79901. AES-PHEAA and Datamark, Inc. are collectively referred to as the "Parties."

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

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

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

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

ARTICLE 1. DEFINITIONS

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

1.1 "Affiliates" means all current or future entities that directly or indirectly, through one or more intermediaries, Control (as defined herein) or are Controlled by, or are under common Control with, Disclosing Party or Recipient, or that are successors (whether by change of name, dissolution, merger,

consolidation, reorganization, or otherwise) to any such entities or their businesses and assets.

1.2 "Agreement" means this Master Mutual Non-Disclosure Agreement, as amended from time to time.

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

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

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

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

ARTICLE 2. CONFIDENTIALITY OBLIGATION

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

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

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

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

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

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

ARTICLE 3. PRIVACY AND SECURITY

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

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

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

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

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

- (i) Burning, pulverizing or shredding of papers containing Confidential Information so that the information cannot practicably be read or reconstructed;
- (ii) Ensuring the destruction or erasure of electronic media containing Confidential Information so that the information cannot practicably be read or reconstructed; and/or
- (iii) Ensuring that any third party who performs the activities described in (i) and (ii) on behalf of

Recipient above does so in a manner consistent with this Section.

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

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

ARTICLE 4. BREACH OF CONFIDENTIALITY

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

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

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

ARTICLE 5. TERM

5.1 The terms and conditions of this Agreement shall survive for a minimum of five (5) years after the date of delivery of the last item of Confidential Information between the Parties. Notwithstanding the foregoing, the Recipient acknowledges that (i) its obligations under this Agreement with respect to the Disclosing Party's Confidential Information shall remain

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

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

ARTICLE 6. MISCELLANEOUS

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

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

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

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

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

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

or provision of this Agreement invalid, illegal, or unenforceable.

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

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

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

this Agreement or any information, proprietary or otherwise, which is provided by Datamark, Inc. to AES/PHEAA hereunder.

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

If to AES/PHEAA:

AES/PHEAA
1200 North Seventh Street, HQ6 NE3
Harrisburg, PA 17102
Attention: Chief Counsel

If to Datamark, Inc.:

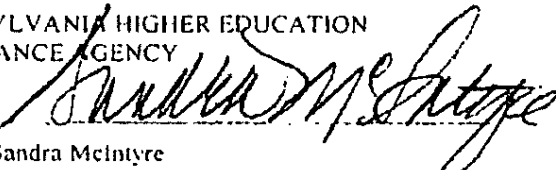
DATAMARK Inc.
123 W. Mills Ave, Ste 400
El Paso, TX 79901

Attention: President

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

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


PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY

By: 
Name: Sandra McIntyre

Title: Vice President, Administration

Federal Tax ID NO.: 23-1693362

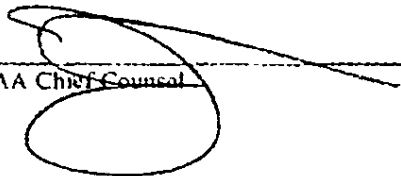
DATAMARK, INC.

By: 
Name: William F. RANDOLPH JR

Title: PRESIDENT

Federal Tax ID No.: 74-2559595

Approved as to form and legality.


PHEAA Chief Counsel

This Agreement has been pre-approved by the Pennsylvania

Office of Attorney General, 58-FA-8.0

Contract No ME1605-072

ml

EXHIBIT 2

PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY

SPECIAL TERMS AND CONDITIONS

These Special Terms and Conditions are to be read in conjunction with the Agreement (the "Agreement") between the Pennsylvania Higher Education Assistance Agency ("PHEAA") and Contractor, including without limitation any attachments, exhibits or other supplements incorporated into the Agreement. In the event of a conflict between these Special Terms and Conditions and any provision of the Agreement, these Special Terms and Conditions shall prevail. The terms "Government" or "Federal Government" as used herein, each means the United States Government or any of its agencies or instrumentalities, including without limitation the Department of Education.

- I. **Contractors Debarred, Suspended or Proposed for Debarment.** Contractor represents, warrants and certifies that neither Contractor nor any of its principals are currently under suspension or debarment, or proposed for suspension or debarment, by any state or by the Federal Government. If Contractor is subsequently suspended, debarred, proposed for suspension or debarment, or enters into a subcontract under this Agreement with any subcontractor who are currently, or who subsequently become, suspended, debarred or proposed for suspension or debarment, Contractor shall provide prompt written notice thereof to PHEAA, and PHEAA shall have the right to either (i) require Contractor to terminate such subcontracts or (ii) terminate this Agreement.
- II. **Changes.** PHEAA may order changes within the general scope of the Agreement at any time by written notice to Contractor, including without limitation, the description of services to be performed, time or place of performance, or any other change required due to a change made to a contract between PHEAA and the Federal Government. Contractor shall comply with a notice of change upon receipt. Contractor shall be compensated for additional costs incurred as the result of such order and shall credit PHEAA for any savings, as determined by written agreement of the parties. Contractor must assert a right to a compensation adjustment under this clause by providing written notice of its request for adjustment within 30 days of receipt of a written change order. Nothing in this clause shall excuse Contractor from proceeding with the contract as modified by any such change order.
- III. **Termination for Convenience.** Notwithstanding any other provision of this Agreement, PHEAA may immediately terminate this Agreement, in whole or in part, to the extent any item or service provided by Contractor is related to a contract between PHEAA and the Federal Government, and such contract between PHEAA and the Federal Government is terminated in whole or in part. In the event of such termination, PHEAA shall be liable only for work performed prior to termination.
- IV. **Security Clearances.** Contractor understands and agrees that each of its employees, agents or contractors may be required to obtain a Federal security clearance prior to beginning work at a PHEAA location or accessing confidential, proprietary or other restricted or sensitive information from PHEAA. PHEAA may at its sole discretion refuse to allow any of Contractor's employees, agents or contractors who do not obtain any required security clearance to perform any services under this Agreement.
- V. **Self-Reporting of Violations.** Contractor shall promptly refer to PHEAA and to an appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee or subcontractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729-3733).
- VI. **Security Protocol for Reporting Contract Employee Departure from a Contract.** Contractor shall immediately notify PHEAA when a Contractor or subcontractor employee no longer provides services under the contract. Such notification shall include, but not be limited to, the following: employee's first, middle and last name; eQIP number, if available; list of systems to which the employee had access, and any associated user IDs, if available; and termination date.

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VII. CONFLICTS OF INTEREST.

- (a) Contractor and any subcontractor, employee or consultant of Contractor, by signing the Agreement, certifies that, to the best of its knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational or personal conflict of interest, (see 48 C.F.R. subpart 9.5, for organizational conflicts of interest), or apparent conflict of interest, for the organization or any of its staff, and that Contractor and any subcontractor, employee or consultant has disclosed all such relevant information if such a conflict of interest appears to exist to a reasonable person with knowledge of the relevant facts (or if such a person would question the impartiality of the Contractor, subcontractor, employee or consultant). Conflicts may arise in the following situations:
- (1) Unequal access to information – a potential contractor, subcontractor, employee or consultant has access to non-public information through its performance on a Federal Government contract.
 - (2) Biased ground rules – a potential contractor, subcontractor, employee or consultant has worked, in one Federal Government contract, or program, on the basic structure or ground rules of another Federal Government contract.
 - (3) Impaired objectivity – a potential contractor, subcontractor, employee or consultant, or member of their immediate family (spouse, parent or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of Government programs, in offering advice or recommendations, or in providing technical assistance or other services to recipients of Federal funds.

Contractor must provide the disclosure described above on any actual, potential or apparent conflict of interest regardless of its opinion that such a conflict would not impair their objectivity. In a case in which an actual, potential or apparent conflict is disclosed, PHEAA or the Federal Government will take appropriate actions to eliminate or address the actual, potential or apparent conflict, including but not limited to mitigating or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest.

- (b) Contractor, and any subcontractor, employee or consultant, agrees that if impaired objectivity, or an actual, potential or apparent conflict of interest is discovered after the award is made, it will make a full disclosure in writing to PHEAA. This disclosure shall include a description of actions Contractor has taken or proposes to take, after consultation with PHEAA, to avoid, mitigate, or neutralize the actual, potential or apparent conflict.
- (c) PHEAA may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to avoid the appearance of a conflict of interest. If Contractor was aware of a potential conflict of interest prior to award or discovered an actual, potential or apparent conflict of interest after award and did not disclose or misrepresented relevant information to PHEAA, PHEAA may terminate the contract for default, and PHEAA or the Federal Government may pursue such other remedies as may be permitted by law or this contract. These remedies include imprisonment for up to five years for violation of 18 U.S.C. § 1001, fines of up to \$5,000 for violation of 31 U.S.C. § 3802, as well as suspension or debarment from contracting with the Commonwealth of Pennsylvania or Federal Government. Contractor may also be required to reimburse PHEAA or the Government for costs incurred arising from activities related to conflicts of interest. An example of such costs would be those incurred in processing Freedom of Information Act requests related to a conflict of interest.
- (d) In cases where remedies short of termination are applied, Contractor or any subcontractor, employee or consultant agrees to eliminate the conflict of interest, or mitigate it to the satisfaction of PHEAA and the Government.
- (e) Contractor shall insert in any subcontract or consultant agreement hereunder provisions which shall conform substantially to the language of this clause including specific mention of potential remedies and this paragraph (e).

VIII. Incorporation of Federal Acquisition Regulations by Reference. The following FARs are incorporated by reference as if fully set forth herein, except that the term "Contracting Officer", wherever it appears in the FARs, shall be replaced by "PHEAA," the terms "Contractor" shall, include directors, officers, partners, managers, employees, agents and owners of more than five percent (5%) financial interest in Contractor, and the terms "Government" or "Federal Government" each means the United States Government or any of its agencies or instrumentalities, including without limitation the Department of Education.

<u>Paragraph</u>	<u>Title</u>
52.203-13	Contractor Code of Business Ethics and Conduct (Dec 2008) ¹
52.203-15	Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Mar 2009)
52.203-17	Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014) ²
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017)
52.204-21	Basic Safeguarding of Covered Contractor Information Systems (June 2016) ³
52.215-2	Audit and Records – Negotiation – Alternate I (Mar 2009)
52.219-8	Utilization of Small Business Concerns (May 2004) ⁴
52.219-9	Small Business Subcontracting Plan (Oct 2015)
52.222-26	Equal Opportunity (Mar 2007)
52.222-35	Equal Opportunity for Veterans (Sep 2006) ⁵
52.222-36	Affirmative Action for Workers with Disabilities (Jun 1998) ⁶
52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) ⁷
52.222-41	Service Contract Act of 1965 (Nov 2007)
52.222-50	Combating Trafficking in Persons (Aug 2007)
52.222-54	Employment Eligibility Verification (Jan 2009) ⁸
52.224-1	Privacy Act Notification (Apr 1984) ⁹
52.224-2	Privacy Act (Apr 1984) ¹⁰
52.245-1	Government Property (Jun 2007) ¹¹

IX. Reporting Executive Compensation and First-Tier Subcontract Awards.¹²

(a) Pursuant to FAR (FAR) 52.204-10 (July 2010), PHEAA must report information regarding certain first-tier subcontracts to the Government. Contractor acknowledges this obligation and agrees to provide the information listed in this clause no later than ten (10) after execution of the Agreement:

¹ Applies only if the Agreement has a value in excess of \$5,000,000 and a performance period of more than 120 days.

² Applies only if the Agreements or any purchase order thereunder is expected to have a value in any single year that exceeds the current "simplified acquisition threshold" as defined in FAR 2.101.

³ Applies only if the Contractor may have Federal contract information residing in or transiting through its information system, other than acquisition of commercially available off-the-shelf items.

⁴ Applies only if Contractor provides further subcontracting opportunities under the Agreement.

⁵ Applies only if the Agreement or any purchase order thereunder has a value equal to or greater than \$100,000.

⁶ Applies only if the Agreement or any purchase order thereunder has a value equal to or greater than \$10,000.

⁷ Applies only if the Agreements or any purchase order thereunder is expected to have a value in any single year that exceeds the current "simplified acquisition threshold" as defined in FAR 2.101.

⁸ Applies only if the Agreement: (i) has a value in excess of \$3,000; (ii) is for services (excluding services to provide only "Commercially available off-the-shelf ("COTS") items", as defined in the FAR, or items that would be a COTS item but for minor modifications) performed by the COTS provider and normally provided for that COTS item or is for construction, and (iii) includes work performed in the United States.

⁹ Applies only if Contractor will be required to design, develop or operate a system of records on individuals to accomplish a Government function.

¹⁰ Applies only if Contractor will be required to design, develop or operate a system of records on individuals to accomplish a Government function.

¹¹ Applies only if Government property is provided to Contractor for performance of the Agreement.

¹² Does not apply if the Agreement is valued at less than \$25,000, if Contractor is an individual; or if Contractor's gross receipts in the immediately preceding tax year were less than \$300,000.

- (1) Unique identifier (DUNS Number) for the Contractor and for the Contractor's parent company, if applicable.
 - (2) Contractor's physical address (street address, city, state, country, nine-digit zip code) as well as the congressional district in which this address is located.
 - (3) Contractor's primary performance location (street address, city, state, country, nine-digit zip code) as well as the congressional district in which this location resides.
 - (4) The applicable North American Industry Classification System code for the goods or services provided.
 - (5) In addition, Contractor shall provide information summarizing the total compensation and names of each of the five most highly compensated executives for Contractor's preceding completed fiscal year, if: (i) in its preceding fiscal year, Contractor received: both 80% or more of its annual gross revenues and \$25,000,000 or more in annual gross revenue from Federal contracts, subcontracts, loans, grants, subgrants, and cooperative agreements; and (ii) the public does not have access to information about compensation of Contractor's executives through periodic reports filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 or Section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access, see U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
- (c) Contractor acknowledges that information reported under this provision will be made public by the Government pursuant to the Federal Funding Accountability and Transparency Act of 2006, as amended by section 6202 of the Government Funding Transparency Act of 2008.
- (d) *Definitions.* As used in this clause:
- (1) "Executive" means officers, managing partners, or any other employees in management positions.
 - (2) "Total compensation" means the cash and noncash dollar value earned by an executive during the Contractor's preceding fiscal year and includes (for more information see 17 C.F.R. 229.402(c)(2)):
 - (i) *Salary and bonus.*
 - (ii) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - (iii) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - (iv) *Change in pension value.* The change in present value of defined benefit and actuarial pension plans.
 - (v) *Above-market earnings on deferred compensation which is not tax-qualified.*
 - (vi) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

X. Precedence of Terms. These Special Terms and Conditions shall apply in all instances. In the event of any conflict between any of the Special Terms and Conditions and any other provision of the Agreement, including without limitation any General Terms and Conditions, these Special Terms and Conditions shall apply.

Revised: 1/24/2018

EXHIBIT 3

**Pennsylvania Higher Education Assistance Agency ("PHEAA"),
a public corporation and governmental instrumentality
organized under the laws of the Commonwealth of Pennsylvania**

GENERAL TERMS AND CONDITIONS

1. Definitions.

- a. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
- b. Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this Agreement.
- c. Contractor means the individual or entity that has entered into this Agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than five percent interest.
- d. Financial interest means:
 - (1) ownership of more than five percent in any business; or
 - (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.

2. Contractor Standards. The Contractor shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.

3. Contractor Responsibilities.

- a. Contractor understands and agrees that prior to placing any of its employees at any PHEAA location, the Contractor shall undertake investigatory background inquiries on such individuals, including but not limited to obtaining and examining criminal history and motor vehicle records. Contractor agrees to provide the results of any inquiries to PHEAA upon PHEAA's request.
- b. Contractor shall be responsible for ensuring that all of Contractor's staff working on PHEAA's premises are provided with, understand and adhere to, PHEAA's policies, procedures and practices, including those involving workplace safety and security.

4. Deliveries. All persons making deliveries to PHEAA, will attest that the delivery was not tampered with, nor compromised, while in their possession. As applicable, skid deliveries to PHEAA must be shrink-wrapped.

5. Confidentiality. The Contractor shall not disclose to others any confidential information gained by virtue of this Agreement. Any breach of confidentiality will result in immediate termination of this Agreement. The Contractor is responsible for any additional costs to PHEAA as a direct result of termination of this Agreement.

6. Ethics.

- a. The Contractor shall not, in connection with this or any other agreement with PHEAA, directly or indirectly, offer, confer or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of PHEAA. Nor shall the Contractor, directly or indirectly, offer, give or agree to promise to give to, any person, any gratuity for the benefit of or at the direction or request of any officer or employee of PHEAA. Except with the consent of PHEAA, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this Agreement.
- b. Except with the consent of PHEAA, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
- c. The Contractor, by execution of this Agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions. The Contractor upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify PHEAA in writing.

7. Debarment.

- a. Contractor certifies that it is not currently under suspension or debarment by the Commonwealth, any other state, or the federal government.
- b. If Contractor enters into any subcontracts under this Agreement with subcontractors who are currently suspended or debarred by the Commonwealth or federal government or who become suspended or debarred by the Commonwealth or federal government during the term of this Agreement or any extensions or renewals thereof, PHEAA shall have the right to require the contractor to terminate such subcontracts.

8. OFAC Checks.

- a. Contractor represents that neither Contractor, nor any of its subsidiaries, affiliates, directors, officers, agents, employees, or subcontractors, are:
 - (1) individuals or entities that are listed in the annex to, or are otherwise subject to the prohibitions contained in, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "Executive Order") or the Office of Foreign Asset Control ("OFAC") regulations;
 - (2) individual or entity with whom Customer is prohibited from dealing or otherwise engaging in business under any U.S. law, regulation, executive order and/or lists published by OFAC (including those executive orders and lists published by OFAC);
 - (3) individual or entity that is named on the most current list of "Specially Designated Nationals and Blocked Persons" published by OFAC on its official website or any replacement website or other replacement official publication of such list; or

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(4) an individual or entity with which any financial institution is prohibited from dealing or otherwise engaging in any transaction under any laws or regulations related to terrorism or money laundering.

b. **Ongoing Obligation.** If at any time during the term of this Agreement, any of the representations contained in this Section are no longer true, Contractor will immediately notify Customer (PHEAA), and Customer shall have the immediate right to terminate this Agreement, without further obligation or penalty. Contractor shall conduct periodic reviews, no less frequently than quarterly, of the lists mentioned above.

9. Business and Financial Records. Upon reasonable prior written notice and during normal business hours, PHEAA, its Inspector General or other designated auditors may audit the Contractor's procedures with respect to its customer's data.

10. Qualifications of Contractors. PHEAA may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor to perform the work/furnish the item(s) and the Contractor shall furnish to PHEAA all such information and data for this purpose as may be requested. PHEAA reserves the right to inspect the Contractor's physical facilities prior to award to satisfy questions regarding the Contractor's capabilities. PHEAA further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Contractor fails to satisfy PHEAA that such Contractor is properly qualified to carry out the obligations of the Agreement and to complete the work/furnish the item(s) contemplated therein.

11. Indemnification. Contractor shall indemnify and hold PHEAA harmless from any claims asserted due to the activities of Contractor, its employees or agents in the performance of the activities required under this agreement.

12. Applicable Law and Courts. The Contractor agrees to comply with all applicable laws and regulations of the Commonwealth of Pennsylvania in carrying out this Agreement.

13. Independent Contractor. The Contractor, its agents, and employees, shall act in an independent capacity and shall not act or be deemed to act as officers, employees, or agents of PHEAA.

14. RESERVED

15. Mandatory Use of Terms and Conditions. PHEAA reserves the right to decide, on a case-by-case basis, at its sole discretion, whether or not to modify or add to these General Terms and Conditions.

16. Clarification of Terms. If any prospective Contractor has questions about the specifications or other solicitation documents, the prospective Contractor should contact the Supply Management Office.

17. Rights and Remedies. For violation of any provisions, PHEAA may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those PHEAA may have under this Agreement, law, statute, regulation, or otherwise.

18. Force Majeure: Neither Party shall be responsible for delays or failures in performance resulting from acts beyond the control of the non-performing Party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disasters, nuclear accident, strike, lock-out, riot, war, act of terrorism, freight embargo, failure of public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by either Party arises out of causes beyond the Party's control and without the fault or negligence of that Party, then that Party shall not be liable for damages as a result of such delay or failure.

19. RESERVED

20. RESERVED

21. Testing and Inspection. PHEAA reserves the right to conduct any test/inspection after payment it may deem advisable within a reasonable time after delivery, and to reject the equipment, goods, materials or supplies if such post-payment testing or inspection discloses a defect or a failure to meet specifications.

22. Assignment of Agreement. An Agreement and the rights and obligations hereunder may not be assigned in whole or in part by the Contractor without the prior written consent of PHEAA, and any purported assignment without such written consent shall be void and of no effect.

23. Changes to the Agreement. PHEAA may order changes within the general scope of the Agreement at any time by written notice to the Contractor. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give PHEAA a credit for any savings. Said compensation shall be determined by mutual agreement between the parties in writing.

24. Default. In case of failure to deliver goods/services in accordance with the Agreement terms and conditions, PHEAA, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative cost. This remedy shall be in addition to any other remedies which PHEAA may have.

25. Cancellation of Agreement. PHEAA reserves the right to cancel and terminate any resulting Agreement, in part or in whole, without penalty, upon thirty (30) days written notice to the Contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

26. Subcontracts. No portion of the work shall be subcontracted without prior written consent of PHEAA. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish PHEAA the names, qualifications, and experience of their proposed subcontractor(s), as well as a certification that such subcontractor has met applicable OFAC requirements, as required in Paragraph 8 above. The Contractor shall, however, remain fully liable and responsible for the work/service to be performed by his subcontractor(s) and shall assure compliance with all requirements of the Agreement.

27. Compliance with Regulations, Rules, and Applicable Laws. The Contractor must at all times observe and comply with applicable federal, state, or local laws, ordinances, decrees and regulations existing at the time of or enacted subsequent to the execution of any Agreement.

28. Right to Know Act. The Contractor acknowledges, understands and agrees that this entire Agreement and any information contained herein may be subject to disclosure by PHEAA as a "public record" as required by Pennsylvania's Right to Know Law (hereinafter "the Act").

Moreover, Contractor agrees and understands that if this contract involves: (1) the sale of any property of any kind or description (real, personal or mixed); or (2) personal services, and the consideration involved herein is \$5,000.00 or more, then Section 1701(a) of the Act requires PHEAA to submit a copy of this Agreement to the Pennsylvania Department of Treasury within ten (10) days after the contract is fully executed. Thereafter, the Pennsylvania Department of Treasury shall make this Agreement available for public inspection by either posting a copy of the entire contract or a contract summary on the Treasury Department's publicly-accessible internet website.

To the extent Contractor believes this Agreement contains any "trade secret" or "confidential proprietary information" (as those terms are defined in the Act), Contractor may submit to PHEAA a separate written statement, signed by a representative of the Contractor, identifying which provision(s) of the Agreement contain "trade secret" or "confidential proprietary information." Said statement shall be submitted to PHEAA on the same day Contractor signs this Agreement. Contractor agrees and understands that, by failing to submit a separate written statement signed by its representative indicating that the Agreement contains "trade secret" or "confidential proprietary information," Contractor may be waiving important rights under the Act.

Contractor accordingly waives and releases PHEAA, its agents, officers, representatives, board members and employees, from any and all actions at law or in equity for compliance with the Act. Contractor further acknowledges, understands and agrees that any such disclosure made by PHEAA under the Act does not constitute breach of any confidentiality provision otherwise stated in this Agreement.

29. Precedence of Terms. These General Terms and Conditions shall apply in all instances. In the event that there is a conflict between any of the General Terms and Conditions and any Special Terms and Conditions, if any, or where applicable, the Special Terms and Conditions shall apply. If there is a conflict between PHEAA's General/Special Terms and Conditions and terms and conditions which are part of an Agreement submitted by a contractor, PHEAA's General/Special Terms and Conditions shall prevail.

30. RESERVED

31. Expenses. If applicable, expenses will be reimbursed at the rates currently in effect for employees of PHEAA. Rates are available by contacting the Accounts Payable Office at (717) 720-2700.

32. Tax Exemption. PHEAA is an instrumentality of the Commonwealth of PA and is exempt from local and/or state and local sales and use tax. Our Tax Identification Number is 23-1693362.

33. Commonwealth of Pennsylvania Non-Waiver of Sovereign Immunity. Nothing in this entire Agreement shall be read, interpreted or construed as a waiver of the sovereign immunity of the Commonwealth of Pennsylvania.

GENTERMS Rev. 1.2016

Exhibit #4
PHEAA's Vendor Travel and Expense Policy

EXHIBIT 4
PHEAA TRAVEL AND EXPENSE POLICY

A. Transportation

1. **Rental Cars**

- a. Receipts are required.
- b. Only full size or smaller vehicles should be rented, unless carrying large or bulky business items such as computer equipment, etc. Under no circumstances shall luxury vehicles or sports cars be rented.
- c. Amenities including GPS, satellite radio and sunroof are prohibited unless clearly documented that this was an upgrade offered by the car rental company at no charge due to lack of availability of a vehicle as defined in b. above.
- d. As required by the rental company, the rental car must be returned with a tank of gas which should be obtained at the most economical price.

2. **Air and Rail Travel**

- a. Receipts are required
- b. The lowest possible fare should be selected. Higher priced fares for first class travel will not be reimbursed.

3. **Other Ground Transportation**

- a. Receipts for taxis and shuttles are required. Reimbursement will not be provided for limousines.
- b. Incidentals (non-meal tips) are limited to a total of \$5.00 per day per person, as per the IRS Travel guidelines.

4. **Parking fees and roadway tolls**

- a. The lowest cost parking option should be utilized. Where possible, parking receipts should be obtained and submitted for reimbursement. Valet parking should be avoided.
- b. Where possible, toll receipts should be obtained and submitted for reimbursement.

B. Lodging

1. Unless otherwise covered in the contract, a reasonably priced lodging convenient to PHEAA shall be chosen. The best possible rate (e.g., a government rate, if available) should be secured when booking a reservation. PHEAA has negotiated rates with several area hotels. Supply Management should be contacted to obtain a listing.
2. Costs incurred for shoe shine, dry cleaning, mini-bar, movie rental, or other hotel amenities not directly related to business are not eligible for reimbursement.
3. Food and drinks are reimbursed through per-diem and should not be included on the hotel invoice.

C. Meals

1. Expenses related to meals are not to exceed the subsistence rate. The appropriate subsistence rate is based upon IRS guidelines and the location, and is audited by Accounts Payable. Receipts are not required.
2. Reimbursement for alcoholic beverages is strictly prohibited.
3. Invoices should include an itemization indicating total meal reimbursement per person per day.

D. Other Business Related Expenses

Generally, arrangements should be made with PHEAA for services such as printing, copying, faxing, etc

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EXHIBIT 5

**Pennsylvania Higher Education Assistance Agency ("PHEAA"),
a public corporation and governmental instrumentality
organized under the laws of the Commonwealth of Pennsylvania**

NONDISCRIMINATION CLAUSE

During the term of this contract, Contractor agrees as follows:

(1) Contractor shall not discriminate against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, handicap, ancestry, national origin, age or sex.

Contractor shall take affirmative action to insure that applicants are employed, and that employees or agents are treated during employment, without regard to their race, color, religious creed, handicap, ancestry, national origin, age or sex. Such affirmative action shall include, but is not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training. Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

(2) During the term of this contract, the Contractor agrees as follows:

a) Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act, 28 C.F.R. 35.101 et seq.*, the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "*General Prohibitions Against Discrimination*," 28 C.F.R. 35.130, and all other regulations promulgated under Title II of *The Americans With Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

b) The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph a) above.

(3) Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, handicap, ancestry, national origin, age or sex.

(4) Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contractor understanding, a notice advising said labor union or workers' representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by Contractor.

(5) It shall be no defense to a finding of non-compliance with this nondiscrimination clause that Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factor shall be considered in mitigation in determining appropriate sanctions.

(6) Where the practices of a union or any training program or other source of recruitment will result in the exclusion of minority group persons, so that Contractor will be unable to meet its obligations under this nondiscrimination clause, Contractor shall then employ and fill vacancies through other nondiscriminatory employment procedures.

(7) Contractor shall comply with all state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of Contractor's noncompliance with the nondiscrimination clause of this contract or with any such laws, this contract may be terminated or suspended, in whole or in part, and Contractor may be declared temporarily ineligible for further Commonwealth contracts, and other sanctions may be imposed and remedies invoked.

(8) Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records, and accounts by, the contracting agency for purposes of investigation to ascertain compliance with the provisions of this clause. If Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting agency.

(9) Contractor shall actively recruit minority and women subcontractors or subcontractors with substantial minority representation among their employees.

(10) Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each Subcontractor.

(11) Contractor obligations under this clause are limited to the Contractor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

Rev. 4.4.16

**EXHIBIT 6
STATEMENT OF WORK TEMPLATE**

Project Name:
Service Provider Project Manager:
Company Project Manager:

This Statement of Work ("SOW") dated _____ is entered into pursuant to Master Services Agreement No. _____ executed by Datamark, Inc. ("Contractor") and Pennsylvania Higher Education Assistance Agency ("Client" or "PHEAA") dated _____.

I. DEFINITIONS AND ATTACHMENTS

- (a) Capitalized terms not otherwise herein defined shall have the meanings ascribed to them in the MSA (including its Exhibits 1-5).
- (b) The following documents are attached to, and are hereby integrated into, this SOW. In the case of a conflict between the documents, the following order of precedence shall apply:

II. NOTICE AND APPROVAL OF SUBCONTRACTORS

The following subcontractors will be used for the specified services. The mutual approval of this SOW constitutes the general approval of PHEAA for the use of the subcontractors for the specified services, but does not constitute the approval of individual contractor personnel, who shall be subject to on-boarding and to other PHEAA rules in the same fashion as Contractor personnel, as applicable.

III. HIGH-LEVEL REQUIREMENTS (DELIVERABLES AND SERVICES)

[Scope of services, overarching objectives, etc.]

IV. DETAILED REQUIREMENTS (DELIVERABLES AND SERVICES)

- (a) the begin and end date for the Services to be provided pursuant to the SOW;
- (b) a description of the Services to be performed;
- (c) a description of the Deliverables to be created;
- (d) the delivery date desired for any Deliverables, or any other durational requirements;
- (e) reporting obligations;
- (f) any other requirements for the Services or information deemed necessary by the Parties.

ML

- (g) Specify Subsidiary Documents (per Section 29 of the MSA) which are anticipated under the SOW.

V. PERFORMANCE CRITERIA AND WARRANTY DURATION

- (a) Performance Criteria, including SLAs and Service Level Credits, and Liquidated Damages, as applicable, are as follows:
- (b) Warranty Duration is ____ Months, in accordance with the MSA.

VI. CONTRACTOR QUALITY CONTROL AND AUDIT PROCESS

VII. ADDITIONAL SECURITY / PRIVACY REQUIREMENTS (IF APPLICABLE):

VIII. ADDITIONAL DOCUMENT STORAGE, RETRIEVAL, AND DESTRUCTION REQUIREMENTS (IF APPLICABLE):

VIII. FEES AND PAYMENT SCHEDULE

If fixed price:

The fixed price for the Services is \$_____. Payment shall be in accordance with the following schedule:

If time and materials:

The price for the Services shall be as set forth below:

Withholding amount (where a Service or Deliverable's quality or integration must be tested):

MJ

ACCEPTED AND AGREED as of the first date above written by the following authorized party representatives.

DATAMARK, INC.

**PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Approved as to form and legality

PHEAA Legal Counsel

mz

Exhibit #1

Master Mutual Non-Disclosure Agreement