



## MASTER SERVICE AGREEMENT

This Master Service Agreement is entered into and shall be effective on the last signature date set forth below (“Effective Date”), and is by and between the National Student Clearinghouse (the “Clearinghouse”), a Virginia nonprofit organization with offices at 2300 Dulles Station Blvd., Ste. 220, Herndon, VA 20171, and postsecondary educational institution identified in Part One below (the “Institution” and, with the Clearinghouse, each a “party” and collectively the “parties”). The parties agree that the terms of this MSA shall apply to and govern all orders for services (each, an “Order”) that any school, branch, campus, center, department, officer or other unit of the Institution (each, a “Unit”) has heretofore places or shall in the future place with the Clearinghouse. Each Unit will be understood to have entered a separate agreement with the Clearinghouse. As the Clearinghouse provides services the Institution wishes to receive, this MSA establishes the business relationship between the parties and the allocation of responsibilities regarding those services. The parties agree as follows:

Part One: (Please complete this entire section)

**Chabot-Las Positas Community College  
District, Las Positas College**

Institution

**Las Positas College  
3000 Campus Hill Drive**

Street Address

**Livermore, California 94551**

City/State/Zip

030357

OPEID

Part Two: Selection of Services

The Clearinghouse shall provide the Institution with services (“**Services**”) set out in one or more Statements of Work (collectively the “**SOWs**”, each an “**SOW**”). The initial accepted SOW(s), as determined by Institution’s selection in Part Two shall be attached to this MSA and are hereby incorporated by reference. If the Clearinghouse should contact staff at your institution other than the contract signee to initiate your service, please provide his/her name and contact information in the corresponding SOW’s “Service Implementation Contact” section.

Additional SOWs shall be deemed issued and accepted only if signed by authorized representatives of each of the Clearinghouse and the Institution.

<b>Service</b>	<b>Included in Contract:</b>
Enrollment and Education Financial Industry Reporting	Yes
Course Exchange	No
Transcript Services	No
StudentTracker Colleges and Universities	Yes
Education Verification and Authentication Services	Yes
Student Self-Service	No
DegreeVerify for Educational Requestors	No
Myhub	No
Postsecondary Data Partnership	No

The parties further agree that any Orders in effect as of the date hereof are hereby deemed amended to conform to the provisions of this MSA, including SOWs. The Clearinghouse may hereafter accept any new Order directly from a Unit. New Orders shall be in the form included in Exhibit A.

#### Part Three: Declaration of Directory Information

Unless the Student has provided a signed and dated written consent to release his or her Education Record(s), the Clearinghouse will release only information that the Institution has designated Directory Information under FERPA and that the Student has not blocked from release.

<b>Record Element</b>	<b>Indicate Yes or No</b>
Do you or will you designate a student's address as Directory Information under FERPA?	Yes
Do you or will you designate a student's enrollment status, including but not limited to such statuses as full-time or half-time, as Directory Information under FERPA?	Yes

#### Part Four: Definitions

**"Aggregated Data"** means De-Identified data elements that have been combined in statistical or summary form. Aggregated Data may include data derived from data elements not submitted to the Clearinghouse by Institution.

**"Authorized Persons"** means either party's employees, contractors, subcontractors, and auditors who have a need to know or otherwise access Confidential Information to perform its obligations under this MSA, and who are bound in writing by confidentiality and other obligations sufficient to protect Confidential Information in accordance with the terms and conditions of this MSA. Where there is reference to the Authorized Persons of a specific party, the contract is referring to the employees, contractors, subcontractors, and auditors of that party only.

**"Confidential Information"** means all information disclosed by one party to this MSA (the Disclosing Party) to the other party (the Receiving Party) orally, electronically, visually, or in a tangible form which is either (i) marked as "confidential" (or with a similar legend), (ii) is identified at the time of disclosure as being confidential, or (iii) should be reasonably understood to be confidential or proprietary based on

the nature of the information or the manner of its disclosure. Confidential Information includes, but is not limited to: trade secrets, PII (as defined below), Education Records, financial information, possible future products or services that are not yet publicly available.

**“De-Identified”** means the data elements have undergone a process of removing the linkage between a set of identifying data and the data subject. For any release of De-Identified data derived from Education Records, the releasing party will contractually require the recipient to not attempt re-identification of any of the data elements.

**“Directory Information”** means the data elements designated by the Institution as Directory Information, except that if the Institution notifies the Clearinghouse that a Student has opted-out of the disclosure of his/her Directory Information, then that Student’s Education Record shall not be Directory Information. All Directory Information is an Education Record.

**“Education Record”** has the meaning given to it by FERPA, which covers records that are: (1) directly related to an enrolled or previously enrolled student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution.

**“Education Record File”** means an electronic file sent by the Institution to the Clearinghouse containing Education Records relating to all of the Institution’s Students. The data elements in an Education Record File shall be reasonably agreed to by the parties and the Institution shall indicate in the electronic file which Students have opted to block the release of their Directory Information.

**“FERPA”** means the Family Educational Rights and Privacy Act of 1974 (codified at 20 U.S.C. 1232g) and its implementing regulations, as they may be amended from time to time.

**“HEA”** means the Higher Education Act of 1965 (codified at 20 U.S.C. 1001) and its implementing regulations, as they may be amended from time to time.

**“MSA”** means this Master Service Agreement and the Statements of Work accompanying all Services that the Institution has elected to receive.

**“Non-Directory Information”** any PII from an Education Record that is not Directory Information.

**“Personally Identifiable Information”** or **“PII”** means any information identified as personally identifiable information under FERPA or applicable state law.

**“Personally Identifiable Information”** or **“PII”** means any information identified as personally identifiable information under FERPA or applicable state law.

**“School Official”** means a contractor, consultant, volunteer, or other party to whom the Institution has outsourced institutional services or functions provided that they are performing an institutional service or function for which the Institution would otherwise use employees and is under the direct control of the Institution with respect to the use and maintenance of Education Records.

**“Students”** means all enrolled, previously enrolled, and/or graduated students of the Institution.

**“Third Party Servicer”** means an individual; a state; or a private, profit or non-profit organization that enters into a contract with the Institution to administer, through manual or automated processing, any aspect of the Institution’s participation in any Title IV, HEA program.

#### Part Five: General Terms and Conditions

1. General Purpose. The Clearinghouse provides a nationwide, central data cooperative for Education Records from participating postsecondary institutions and a number of data management services for postsecondary institutions, who engage the Clearinghouse to process and disclose Education Records on their behalf. The Clearinghouse's services are based on a

multi-tenanted operating model that applies common, consistent management practices for all postsecondary institutions using the service. The purpose of this MSA is for the Institution to receive certain services from the Clearinghouse, as indicated from the Institution's selection in Part Two above, which includes providing Education Record Files to the Clearinghouse on a regular basis for processing.

2. School Official. The Clearinghouse acknowledges that it is fully familiar with the obligations of, is subject to, and will fully comply with the privacy regulations set forth in FERPA. The Clearinghouse will not access, disclose or use any student information or Education Records except to the extent such access, disclosure or use is in full accordance with FERPA, and is explicitly permitted under this Agreement. The Clearinghouse will maintain the security of student information and Education Records at all times and will promptly notify the Participating Institution/System in the event of any disclosure that is inconsistent with the terms of this Agreement. The Parties understand and agree that the Clearinghouse serves as a “school official” or “college official” of the Institution for the purpose of receiving personally identifiable student information under FERPA in accordance with 34 CFR 99.31(a)(1)(ii) and is responsible for the proper handling of student information and Education Records in accordance with the terms of this MSA, FERPA, and the HEA.

The Institution shall ensure the Clearinghouse’s performance of the Services selected from Part Two meet the criteria of School Official set forth in the Institution’s annual notification of FERPA rights, unless another valid FERPA exception applies that permits the disclosure of Education Records by the Institution to the Clearinghouse. In its appointment as a School Official, the Clearinghouse shall be under the direct control of the Institution with respect to its use and maintenance of Education Records provided by the Institution.

Notwithstanding any other provisions of this MSA, the Clearinghouse agrees it shall, to the extent required by applicable law or regulation, be jointly and severally liable with the Institution to the Secretary of Education for any violation by the Clearinghouse of any statutory provision of or applicable to Title IV of the HEA, and any regulatory provision prescribed thereunder that specifically affects the responsibilities the Clearinghouse is performing as a Third Party Servicer for the Institution, and for any violation by the Clearinghouse of any applicable special arrangement, agreement, or limitation entered into by the Clearinghouse directly relating to such responsibilities.

The Clearinghouse represents and warrants that it is able to enter into this MSA and not restricted from providing Third Party Servicer services under the HEA [34 CFR Section 668.25(d)] because of limitations, suspension, termination, excessive audit findings or similar violations as determined by the Department of Education.

The Clearinghouse agrees to comply with all statutory provisions of or applicable to Title IV of the HEA, all regulatory provisions prescribed under that statutory authority, and all special arrangements, agreements, limitations, suspensions, and terminations entered into under the authority of statutes applicable to Title IV of the HEA, including the requirement to use any

funds the Clearinghouse administers under any Title IV, HEA program and any interest or other earnings thereon solely for the purposes specified in and in accordance with that program.

To the extent required by applicable law or regulation, the Clearinghouse shall refer to the Office of Inspector General of the U.S. Department of Education for investigation any information indicating there is reasonable cause to believe that (i) the Institution might have engaged in fraud or other criminal misconduct in connection with its administration of any Title IV, HEA program or (ii) an applicant for Title IV, HEA program assistance might have engaged in fraud or other criminal misconduct in connection with his or her application.

3. Data Ownership. The Parties agree that, as between them, all rights, including all intellectual property rights in and to Education Records transmitted under this MSA, shall remain the exclusive property of the Institution. The Clearinghouse may develop, retain, or release aggregate or De-Identified information that does not contain Social Security numbers or other Personally Identifiable Information which is in part comprised of information received from the Institution under this MSA ("Reports"), subject to the ownership rights of Institution as set forth herein. The Clearinghouse owns all Reports generated under this MSA but its use of such Reports is limited as described in this MSA.
4. Permissible Data Use. Unless authorized under this MSA or a subsequent amendment of the MSA signed by the parties or by a signed and dated written consent of the Student, the Clearinghouse shall not access, process, or disclose Education Records or Personally Identifiable Information received under this MSA for any purpose. The Clearinghouse shall restrict access to Education Records and Personally Identifiable Information by its employees to those individuals who need to access the Education Records to facilitate performance by the Clearinghouse under the MSA and who are subject to a reasonable written non-disclosure agreement with the Clearinghouse protecting the Education Records and Personally Identifiable Information, with confidentiality terms reasonably consistent with, and no less restrictive than, those found in this MSA.

The Clearinghouse may disclose Education Records received under this MSA as authorized by the Institution, provided that the Clearinghouse will release only Directory Information unless the Student has provided consent or the release is otherwise permissible under FERPA. The Clearinghouse may disclose Education Records received under this MSA if the Student whose Education Records are being disclosed has provided written consent for the disclosure.

The Clearinghouse may use De-Identified data for purposes of research, the improvement of its products and services, and/or the development of new products and services that serve the learner, workforce and education communities in support of the Clearinghouse's mission. The Clearinghouse will take reasonable steps to ensure that all third-party recipients of De-Identified data will not re-identify or attempt to re-identify such De-Identified data.

5. Retention and Deletion of Education Records. If the Clearinghouse terminates the MSA, goes out of business, files a petition under the Bankruptcy Code, or stops providing services for the

administration of a Title IV HEA program, it shall return to the Institution all Education Records in its possession pertaining to its role as a Third Party Servicer for Institution and it shall return to the Institution any funds, including Title IV, HEA program funds, received from or on behalf of the Institution or Students, for the purposes of performing Third Party Servicer responsibilities which are no longer provided.

For any Confidential Information provided by Institution that is not an Education Record provided to the Clearinghouse in its role as a Third Party Servicer, at any time upon the written request of the Institution or at the termination of this MSA, the Clearinghouse shall at its option promptly (i) return such Confidential Information to the Institution, or (ii) destroy or permanently erase (on all forms of physical and electronic media) such Confidential Information and certify such destruction or erasure to the Institution. Notwithstanding the previous sentence, the Clearinghouse may retain copies of all Confidential Information, including Education Records, to the extent such copies are electronically stored pursuant to the Clearinghouse's ordinary back-up procedures (including, without limitation, those regarding electronic communications), or otherwise as may be required by applicable law, so long as Confidential Information is kept confidential as required under this MSA and is used for no other purpose, and the Clearinghouse destroys or permanently erases all such copies pursuant to its ordinary back-up procedures or otherwise when it no longer is prohibited by law from destroying such copies.

6. Purchase Orders. During the term of this Agreement, the Parties may execute certain documents either augmenting or more fully describing the Service(s) provided by the Clearinghouse to the Institution ("Purchase Order(s)"). In the event of a conflict between the terms of this Agreement and a Purchase Order, the terms of this Agreement will govern except where the terms of a Purchase Order specifically state otherwise.
7. Shared Obligations . Both the Clearinghouse and the Institution will:
  - a. to the extent applicable, comply with the terms and conditions set forth in this MSA and with all applicable laws and regulations, including the HEA, FERPA, Gramm-Leach-Bliley Act, Fair Credit Reporting Act (15 U.S.C. §§ 1681 *et seq.*), and any applicable state, federal, or international laws concerning the privacy and security of the Confidential Information to be shared hereunder.
  - b. except as authorized under this MSA or to the extent required by applicable law, not use Confidential Information of the other party for any purpose.
  - c. except as authorized under this MSA or to the extent required by applicable law, not disclose Confidential Information of the other party to anyone other than Authorized Persons with a need-to-know to enable parties to perform their obligations under this MSA.
  - d. require any of its Authorized Persons who have access to Confidential Information to agree to the same restrictions, conditions, and requirements at least as restrictive as those that apply to the parties under this MSA.

- e. be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Confidential Information from the other party under its control or in its possession (including by its Authorized Persons).
- f. use only secure methods, according to accepted industry standards, when transferring or otherwise making available Confidential Information to the other party, or when storing Confidential Information received from the other party.

8. Institution Obligations. The Institution will:

- a. maintain reasonably appropriate security policies and procedures designed to prevent unauthorized access to the password protected areas of the Clearinghouse's websites or systems, to the extent that such access is provided as part of the services to the Institution under this MSA, and to prevent its Authorized Persons from sharing their usernames and passwords that have been granted by the Clearinghouse with any other individuals or entities. If an individual is no longer an Authorized Person of the Institution and that individual had been granted a username and password to a Clearinghouse website or system, the Institution agrees to promptly take necessary steps, as instructed by the Clearinghouse, to remove that individual's access to the Clearinghouse website or system.
- b. designate appropriate access types for its Authorized Persons to ensure that they use access granted to the Clearinghouse's websites and systems provided as part of the services to the Institution under this MSA only for purposes related to their job function for the Institution.
- c. acknowledge in all internal and external reports, presentations, publications, press releases, and/or research announcements authorized under this MSA that utilize data received from the Clearinghouse that the source of the data is the Clearinghouse.
- d. promptly notify the Clearinghouse in writing if, at any point during the Term, the Institution changes the categories of information it designates as Directory Information such that Part Three of this MSA is rendered inaccurate. The Institution understands that by changing its designation of Directory Information it may become ineligible for certain Services, which the Clearinghouse will indefinitely suspend until the Institution is eligible again.
- e. make all reasonable efforts to ensure that the Education Records it transmits to the Clearinghouse are accurate and complete and if the Institution learns of any inaccuracy or omission in the Education Records in the Clearinghouse's possession it shall promptly notify the Clearinghouse of such inaccurate or omitted Education Record(s) and provide a correction to such Education Record(s). This includes promptly notifying the Clearinghouse of which Students have chosen to block the release of Directory Information under FERPA.
- f. not provide the Clearinghouse with any information regarding a Student that the Institution knows or has reasonable cause to believe may be inaccurate. If the completeness or accuracy of any information furnished by the Institution to the Clearinghouse is disputed to the Institution by the Student to whom it pertains, the

Institution shall not subsequently provide the disputed information to the Clearinghouse without notice that such information is disputed by the Student.

- g. upon receiving notice that a Student has disputed to the Clearinghouse the accuracy of any information the Institution provided: (i) investigate the dispute and review all relevant information provided by the Clearinghouse to the Institution about the dispute; (ii) report its findings regarding the disputed information to the Clearinghouse; (iii) provide corrected information to the Clearinghouse if the investigation shows the information is incomplete or inaccurate; and (iv) correct any inaccurate information and not subsequently provide the inaccurate information to the Clearinghouse. The Institution shall complete these steps within 20 days of the date the Clearinghouse provides the Institution with notice of the Student's dispute. However, if during this period, the Clearinghouse provides the Institution with additional relevant information regarding the dispute that the Student subsequently provided, the Institution shall have an additional 10 days to complete its investigation and take any necessary action with respect to the disputed information.
- h. to the extent fees for any services are due from the Institution to the Clearinghouse, be liable for any sales, use or similar taxes (if any) on such fees but not for any taxes relating to the income of the Clearinghouse.
- i. comply with all local, state, federal, and foreign legal requirements regarding the privacy of a Student's Education Record, including but not limited to any requirements that legally obligate Institution to provide a Student (or the Student's parents or guardian): (i) notice of the data (or categories of data) Institution collects on the Student; (ii) notice of how the Institution uses the Student's data (or categories of data); (iii) notice of the parties (or categories of parties) to which the Institution transmits, discloses, or otherwise provides access to the Student's data; (iv) the opportunity to opt out of one or more uses of the Student's data; or (v) the opportunity to opt in to one or more uses of the Student's data.
- j. keep a written record of the notices, opt out opportunities, and opt in opportunities provided to Students referenced in subsection (i), and allow the Clearinghouse to conduct periodic audits of such records.
- k. for each submission of Education Records the Institution makes to the Clearinghouse under this Agreement, certifies that it has provided the notices, opt out opportunities, and opt in opportunities required under subsection (i) to each Student whose data is included in the submission.
- l. indemnify, defend and hold harmless the Clearinghouse for any fines, damages, settlement costs, or other costs or expenses of any kind (including reasonable attorney's fees) incurred by the Clearinghouse as a result of Institution's breach of its obligations under subsections 8(i), 8(j) and 8(k) above.

## 9. Information Security.

- a. The Clearinghouse will comply with applicable laws and regulations, including FERPA, the HEA, Gramm-Leach Bliley and any applicable state, federal, or international laws concerning the privacy and security of the information to be shared hereunder, in its



creation, collection, receipt, access, use, storage, disposal, disclosure, and processing of PII or personal data as may be defined under applicable laws, rules, or regulations;

- b. The Clearinghouse will employ reasonable security measures to protect Confidential Information in accordance with accepted industry standards including the National Institution of Standards Technology (NIST) Cybersecurity Framework;
  - c. The Clearinghouse will produce, upon the Institution's request, a Higher Education Cloud Vendor Assessment Tool (HECVAT) document for the product(s) or service(s) that the Institution receives from the Clearinghouse;
  - d. The Clearinghouse shall back up all Education Records submissions from the Institution daily at an offsite facility subject to the Clearinghouse's disaster recovery plan;
  - e. The Clearinghouse represents and warrants websites used to access Education Records will use secured transmissions, with login and secure password required for all Authorized Persons designated by the Institution. Each Authorized Person will be provided access to the Education Records as required to provide services under this Agreement;
  - f. The Clearinghouse shall maintain procedures and safeguards to limit physical access to Confidential Information and the facility or facilities in which they are housed while ensuring that only properly authorized access is allowed, including physical barriers that require keyed-entry or electronic control validation (e.g., card access systems) or validation by human security personnel; and
  - g. The Clearinghouse shall maintain appropriate technical safeguards to ensure PII transmitted over an electronic communications network is not accessed by unauthorized persons or groups. Encryption of Education Record elements will occur prior to when Education Records are uploaded to the Clearinghouse and shall be used when Education Records are in transit or at rest. Unencrypted Education Records shall not be transmitted over public networks to third parties;
  - h. The Clearinghouse shall maintain on-going security awareness through training or other means that provides its employees with updates to security procedures and policies (including guarding against, detecting, and reporting malicious software or activities);
  - i. If, in the course of its performance under this MSA, the Clearinghouse has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information on the Institution's behalf, the Clearinghouse will comply with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, as applicable.
10. Security Breach Procedures. In the event either party determines that there has been an unauthorized or improper disclosure of the information exchanged under this MSA, such party must promptly notify the other party, unless legally prohibited from doing so or specifically directed by law enforcement not to do so, within seventy two hours (or any shorter period as may be required by Law) after such party becomes aware of it. Such notification will include the nature of the incident, the other party's information that was compromised, and the action taken or to be taken. Additionally, each party will reasonably assist the other party in remediating and mitigating any potential damage. Each party shall bear the costs of such remediation or mitigation to the extent the breach or security incident was caused by its acts or

omissions.

If the Institution learns or has reason to believe that unauthorized access to a password protected area of the Clearinghouse website has occurred or is about to occur, the Institution shall notify the Clearinghouse promptly, and without unreasonable delay, and the Clearinghouse may suspend Institution's access until the threat has been contained.

11. Clearinghouse Remediation of Certain Unauthorized Disclosures. In the event that any unauthorized access to or improper disclosure of PII is caused by the Clearinghouse's breach of its security and/or privacy obligations under this MSA, the Clearinghouse shall be responsible for the performance and costs of: (a) a forensic investigation to determine the cause of the breach, if reasonably necessary, after which it shall provide the Institution with a description of the breach, what information was affected, and what steps have been taken to mitigate the effects of the breach; (b) providing notification of the security breach as required by applicable law, including any required notification to government and relevant industry self-regulatory agencies; (c) providing credit file or identity monitoring (as required by state law according to the PII that was accessed or disclosed); and (d) operating an identity theft call center to respond to questions from Students whose PII may have been accessed or disclosed for a period of one year after the date on which such Students were notified of the unauthorized access or disclosure. NOTWITHSTANDING THE FOREGOING, OR ANYTHING IN THE MSA TO THE CONTRARY, THE CLEARINGHOUSE SHALL HAVE NO RESPONSIBILITY TO PAY COSTS OF REMEDIATION THAT ARE DUE TO THE RECKLESS MISCONDUCT, GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR FRAUD BY THE INSTITUTION OR ITS EMPLOYEES, AGENTS OR CONTRACTORS.
12. Access to and Modification of Education Records by Students. The Institution is required under the terms of FERPA to allow parents or eligible students to inspect and review student educational records [20 U.S.C. §1232g(a)(1)(A); 34 C.F.R. §99.10]. During the term of this MSA, Students may request from the Clearinghouse, and the Institution authorizes the Clearinghouse to provide, access to any Education Records pertaining solely to the Student making the request. The Clearinghouse will direct all parents that contact it to the Institution to resolve any requests, complaints, or other matters.
13. Records of Disclosure. The Clearinghouse shall maintain and make available to the Institution the information required to provide an accounting of disclosures to third parties of Education Records as necessary to satisfy the Institution's obligations under 34 CFR §99.32. In accordance with section above, the Clearinghouse may provide access to such accounting of disclosures to Students on the Institution's behalf.
14. Compelled Disclosures. A disclosure by one party of Confidential Information of the other party to the extent required by Law shall not be considered a breach of this Agreement, provided the party so compelled promptly provides the other party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

15. Indemnification.

- a. **The Clearinghouse's Indemnification.** The Clearinghouse shall indemnify, defend, and hold harmless the Institution from and against any and all losses, liabilities, expenses, damages, or injuries (including, without limitation, all costs and reasonable attorneys' fees) that the Institution may sustain arising out of or related to any third-party claim alleging: (1) a breach of this MSA or accompanying SOWs by the Clearinghouse or its Authorized Persons, (2) the Clearinghouse's failure to notify any and all parties required to receive notification of any unauthorized access to or improper disclosure of PII pursuant to Section 11, (3) any negligent or more culpable act or omission of the Clearinghouse or its Authorized Persons (including any reckless or willful misconduct) in connection with the performance of its obligations under this MSA or accompanying SOWs, or (4) any failure by the Clearinghouse or its Authorized Persons to comply with any federal, state, or local laws, regulations, or codes applicable directly to it in the performance of its obligations under this MSA or accompanying SOWs, including, without limitation, any liability to the Secretary of Education for any violation by the Clearinghouse of any statutory provision of or applicable to Title IV of the HEA, and any regulatory provision prescribed thereunder that specifically affects the responsibilities the Clearinghouse is performing as a Third Party Servicer for the Institution, and for any violation by the Clearinghouse of any applicable special arrangement, agreement, or limitation entered into by the Clearinghouse directly relating to such responsibilities.
- b. **The Institution's Indemnification.** The Institution shall indemnify, defend, and hold harmless the Clearinghouse from and against any and all losses, liabilities, expenses, damages, or injuries (including, without limitation, all costs and reasonable attorneys' fees) that the Clearinghouse may sustain arising out of or related to any third-party claim alleging: (1) a breach of this MSA or accompanying SOWs by the Institution or its Authorized Persons, (2) the Clearinghouse's use of incorrect or incomplete information received from the Institution, (3) the Institution's failure to notify the Clearinghouse of any suspected or actual unauthorized access to a password protected area of the Clearinghouse website, (4) any negligent or more culpable act or omission of the Institution or its Authorized Persons (including any reckless or willful misconduct) in connection with the performance of its obligations under this MSA or accompanying SOWs, or (5) any failure by the Institution or its Authorized Persons to comply with any applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under this MSA or accompanying SOWs.

16. Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR INSTITUTION'S MISUSE OF THE SERVICES, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, STUDENT DATA OR BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES, DATA, STUDENT DATA OR ANY OTHER OUTPUT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF AVAILABLE REMEDIES ARE

FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE THAT THE CLEARINGHOUSE HAS PROVIDED THE SERVICES AND EACH OF THE PARTIES HAS ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND IN CONTEMPLATION OF CARRYING OUT THE PURPOSE OF THIS AGREEMENT BETWEEN THE PARTIES.

17. Term and Termination.

- a. Term. Unless previously terminated for cause as provided below, this MSA is effective as of the Effective Date and remains in full force and effect until all SOWs have been terminated or are no longer effective. Each SOW may be terminated in accordance with the terms provided therein. The termination of any one SOW will not affect any other SOW.
- b. Termination with Cause. This MSA may be terminated by either party upon 30 days' written notice to the other party if the other party materially breaches any provision of this MSA and either the breach cannot be cured or, if the breach can be cured, it is not cured by the breaching party within 30 days after the breaching party's receipt of written notice of such breach.
- c. Transition. Upon termination or expiration of this MSA or any Service, both parties will reasonably cooperate in the orderly wind-down of Service(s) being terminated or transitioned.

18. Miscellaneous.

- a. **Amendments and modifications.** This MSA may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto.
- b. **Assignability and Subcontracts.** Neither party may assign or otherwise transfer or delegate all, or substantially all, of its rights or duties in this MSA without the other party's prior written consent. Any purported assignment or delegation in violation of this subsection shall be null and void. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder. Either party may enter into subcontracts provided that, prior to the commencement of any work by any subcontractor, the subcontracting party enters into a written agreement with such subcontractor that binds the subcontractor to terms that are at least as protective of the rights and information of the other party under this MSA, and the subcontracting party uses commercially reasonable efforts to subcontract only with persons or companies that have the requisite skills to perform any subcontracted obligations in accordance with the terms of this MSA.
- c. **Authority to Sign.** Each party represents that the individual signing this MSA on its behalf has the authority to do so and to so legally bind the party. The parties represent that the execution, delivery and performance of this MSA has been fully and validly authorized.
- d. **Captions and Interpretation.** Paragraph headings in this MSA are used solely for convenience, and shall be wholly disregarded in the construction of this

MSA. Paragraph headings shall not be deemed to define, limit or extend the scope or intent of the paragraphs to which they pertain.

- e. **Entire Agreement.** This MSA and all related exhibits and SOWs, constitutes the sole and entire agreement of the parties to this MSA with respect to the subject matter contained herein and therein, and supersedes all prior contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this MSA and the related exhibits and SOWs (other than an exception expressly set forth as such in the SOWs), statements in the body of this MSA shall control.
- f. **Force majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this MSA, for any failure or delay in fulfilling or performing any term of this MSA, when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this MSA; (f) action by any governmental authority; (g) national or regional emergency; and (i) shortage of adequate power or transportation facilities. The party suffering a Force Majeure Event shall give notice within 30 days of the Force Majeure Event to the other party stating the period of time the occurrence is expected to continue, and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.
- g. **This section intentionally omitted.**
- h. **Notices.** Each party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this MSA and accompanying SOWs (each, a "Notice") in writing and addressed to the other party at its address set out below (or to any other address that the receiving party may designate from time to time in accordance with this section). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), email, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this MSA, a Notice is effective only (a) upon receipt by the receiving party and (b) if the party giving the Notice has complied with the requirements of this Section.
- i. **Severability.** If any term or provision of this MSA is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this MSA or invalidate or render unenforceable such term or provision in any other jurisdiction.
- j. **Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this MSA shall operate or

be construed as a waiver thereof. Nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

- k. **Waiver of Jury Trial.** Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action, proceeding, cause of action or counterclaim arising out of or relating to this MSA, including any exhibits, SOWs, and appendices attached to this MSA, or the transactions contemplated hereby.

If to the Clearinghouse: 2300 Dulles Station Blvd.  
Suite 220  
Herndon, VA 20171  
Contracts@studentclearinghouse.org

If to the Institution: Attn: Las Positas College, Dean of Enrollment Services  
Tamica Ward, tward@laspositascollege.edu

IN WITNESS WHEREOF, the parties hereto have executed this MSA as of the Effective Date dated below.

**Chabot-Las Positas Community College District, Las Positas College**

By: \_\_\_\_\_

Name: Doug Roberts  
Title: Vice Chancellor of Business Services

Date: \_\_\_\_\_

**National Student Clearinghouse**

By: \_\_\_\_\_

Name: Ricardo Torres  
Title: President & CEO

Date: \_\_\_\_\_