

STUDENT LOAN NOTIFICATION AGREEMENT

THIS AGREEMENT (“Agreement”) is made as of this _____ day of _____, 20_____, by and between the Pennsylvania Higher Education Assistance Agency, a public corporation and governmental instrumentality organized under the laws of the Commonwealth of Pennsylvania, having an address of 1200 North 7th Street, Harrisburg, Pennsylvania 17102-1444 (“PHEAA”), and the institution identified below by name and principal address (“Institution”).

Name of Institution:

Principal Address:

WITNESSETH:

WHEREAS, The Public School Code of 1949, Act of March 10, 1949 (P.L. 30, No. 14), as amended (the “Act”), mandates that an institution of higher education that receives Federal education loan information or other student loan information regarding a student enrolled at the institution of higher education shall provide the student on an annual basis with an estimate of the total amount of Federal education loans or other student loans which are taken out by the student and disbursed by the institution of higher education; and

WHEREAS, the Act authorizes the institution of higher education to contract with a student loan servicer, including the Pennsylvania Higher Education Assistance Agency, to provide the information required under the Act to the student; and

WHEREAS, Institution desires to hire PHEAA to provide the information to its students as required under the Act, and PHEAA desires to provide such information to the students upon behalf of the Institution.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties to this Agreement agree as follows:

1. DEFINITIONS

The following capitalized terms shall have the meanings specified in this Section 1.

1.1 **“Remote Access Agreement”** means the Remote Access, Confidentiality and Indemnification Agreement and Authentication, including any schedule, attachment, or exhibit attached thereto, and each amendment hereafter adopted, that has been entered into between the Institution and PHEAA.

1.2 **“Breach”** means any unauthorized acquisition of or access to Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information maintained by or for Recipient.

1.3 **“Confidential Information”** shall include, but not be limited to, information disclosed by or through any party to this Agreement (“Disclosing Party”) to any other party hereto (“Recipient”), whether in writing, orally or by any other means, which is confidential and/or proprietary. Such information may include, without limitation: (a) Nonpublic

Personal Information (“NPPI”), as defined in 12 CFR Part 40, as amended from time to time, concerning students and/or Institution’s students; (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 PHEAA or Institution; targeting methods; and other information, documents, and materials that pertain to operation policies, procedures, and any other aspects of the business of PHEAA or Institution; (c) financial and pricing information of PHEAA or Institution involving student loans; and (d) proprietary software developed by PHEAA.

1.4 **“Notice”** means the notices to be sent to each student on a yearly basis containing the information required by the Act.

1.5 **“PHEAA System”** means any computer and network system, including software applications, created, owned, leased, utilized or maintained by PHEAA.

1.6 **“Attempts”** means each time a Notice is emailed to a student by PHEAA and each time PHEAA creates a PDF of a Notice. By way of clarification, if PHEAA sends a Notice to a student at two different email addresses it is counted as two Attempts and if PHEAA emails the Notice, receives a bounce back, and then creates the PDF of the Notice for Institution to send, it is counted as two Attempts.

2. OBLIGATIONS OF THE PARTIES

2.1 Institution’s access to the PHEAA System, and the rights and obligations of the parties with respect to such access, shall be governed by the Remote Access Agreement.

2.2 At a time determined by the Institution, the Institution shall access their portal to the PHEAA System pursuant to the Remote Access Agreement and to trigger PHEAA sending of the Notice. The Institution shall upload to PHEAA through the portal a data file containing the information required by the Act and each student’s email address, if available. After receipt of the data file or files, PHEAA shall create the Notice for each student and, at the option of the Institution, PHEAA shall either (i) email the Notice to each student or (ii) create a PDF of the Notice and the Institution shall download the Notice and the Institution shall provide the Notice to the student.

2.3 If PHEAA receives a notice of an invalid email address or a bounce back, PHEAA will provide to Institution a file of such invalid email addresses or bounce backs and, after receipt of such file or files, the Institution, at its election, shall either: (i) provide PHEAA with an updated file with new email addresses for such students and PHEAA will attempt to resend the Notice to such student; or (ii) PHEAA shall provide to the Institution a PDF of the Notice for each such student and the Institution shall assume responsibility to provide the Notice to each such student.

3. FEES AND PAYMENTS

3.1 **Fees.** Institution shall pay to PHEAA the following fees:

500 or less Attempts:	\$500 per year
More than 500 Attempts:	\$800 per year

3.2 **Invoicing and Payment.** PHEAA shall invoice Institution after sending the Notices or creating the PDFs of the Notices. Payment on the invoice shall be due within thirty (30) days of receipt of invoice. If invoices are not paid when due, PHEAA may assess interest at the rate of one (1%) percent per month on the unpaid balance.

4. CONFIDENTIAL INFORMATION

4.1 Recipient shall not disclose any Confidential Information to any

employee or third party, or allow any employee or third party to have access to any Confidential Information, other than disclosure to or access by those employees or third parties as is necessary to fulfill the business transaction(s) agreed to or contemplated by the Parties. Recipient shall be solely responsible for the failure of any such employee or third party to comply with the obligations and restrictions set forth in this Agreement. Recipient shall treat Confidential Information with at least the same degree of care that it treats its own Confidential Information of like nature, which shall be no less than the exercise of reasonable precautions to prevent disclosure of Confidential Information to unauthorized parties.

4.2 Recipient shall not use, or authorize any third party to use, the Confidential Information of Disclosing Party: (a) to Disclosing Party's detriment; or (b) for its own benefit or for the benefit of any third party, other than as necessary to perform the business transaction(s) agreed to by the Parties.

4.3 The obligations set forth in this Section 4 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 without restriction on use or disclosure by Recipient; (c) Disclosing Party specifically authorizes in writing the Recipient to use or disclose; (d) can be shown by documentation was independently developed by Recipient without use of or reference to the Confidential Information; or (e) becomes part of the public domain through no act of the Recipient. 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, to the extent practicable, Recipient promptly 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.

4.4 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 enforce this Agreement, including, but not limited to, the right to seek injunctive relief and specific performance without proof of actual damages, and any other remedies as may be available at law or in equity. Notwithstanding the foregoing, this provision shall not be read, interpreted, or construed as a waiver of the sovereign immunity of the Commonwealth of Pennsylvania.

4.5 Upon the Disclosing Party's written demand, Recipient shall return or destroy Disclosing Party's Confidential Information. Destruction of Confidential Information shall be by burning, pulverizing or shredding of papers and any physical medium containing Confidential Information and the erasure of electronic media containing Confidential Information, so that the information cannot practicably be read or reconstructed. Recipient shall 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. Notwithstanding the foregoing, Recipient may retain a copy of any Confidential Information for archival and evidentiary purposes provided any such Confidential Information shall remain subject to the terms of this Agreement. For any Confidential Information not returned or destroyed upon request, Recipient shall have in place and shall follow a policy which shall require that information, including the Confidential Information, is destroyed on a routine basis.

4.6 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), if applicable. Recipient will not directly or indirectly use, or disclose to any third party, affiliated or unaffiliated with Recipient, any Confidential Information, including but not limited to, any non-public personal information, other than to accomplish the requirements of the business transaction(s) agreed to by the Parties.

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

4.8 In the event Recipient knows or reasonably believes that there has been a Breach, Recipient shall take the following actions: (i) promptly 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 applicable and 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; and (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.

If applicable, in addition to any other remedy under this Agreement, at law or in equity, Recipient shall 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 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.

4.9 The obligations of the parties under this Agreement with respect to Confidential Information shall survive the termination of this Agreement.

5. LICENSE

Institution hereby grants to PHEAA a non-exclusive, non-transferable limited license to use the trademarks, trade names, trade dress, logos and service marks of Institution only for the creation and distribution of the Notices pursuant to this Agreement and only during the term of this Agreement.

6. LIABILITY AND INDEMNIFICATION

6.1 To the extent permitted by applicable law, each party agrees to protect, defend, indemnify and hold harmless the other party, its officers, directors, employees and affiliates, successors, or assigns, from and against any and all demands, claims, actions, causes of action, judgments, damages, losses, liabilities, fines, penalties, costs and expenses (collectively "Costs") arising from, related to or connected with any manner whatsoever to the acts or omissions of the party, or any officer, director, employee, agent, or contractor of the party, including, but not limited to, the failure to perform under this Agreement and/or violation of any applicable state or federal law or regulation by any such party arising from, related to, or connected in any manner to this Agreement.

6.2 A party's right to indemnification is in addition to, and may be exercised independently of, any other remedy held by the party under this Agreement at law or in equity. The indemnification obligations under this Section shall survive the termination or expiration of this Agreement.

6.3 Notwithstanding the foregoing, Institution expressly agrees that PHEAA shall not be liable for any Cost resulting from an act or omission of PHEAA if such act or omission occurred as a result of PHEAA's reliance on information or instruction provided by Institution, or by any officer, director, employee, affiliate, agent, contractor, successor or assign of Institution, or due to any commercially reasonable unavailability of the PHEAA System.

6.4 This Section 6 shall not be read, interpreted, or construed as a waiver of the Sovereign Immunity of the Commonwealth of Pennsylvania.

7. TERM

This Agreement shall commence on the date first written above and shall continue until PHEAA or Institution provides to the other party thirty (30)

days prior written notice of termination of the Agreement. Notwithstanding the foregoing, either party may unilaterally terminate this Agreement immediately in the event of: (i) a material breach of any of the obligations of the other party under this Agreement; (ii) a material change to the applicable federal or state laws or regulations thereunder which materially alters the legality or economics of either party's obligations under this Agreement; or (iii) termination of the Remote Access Agreement.

8. NOTICES

Any notice to the other party under this Agreement shall be in writing and delivered to the addresses set forth above. Notice shall be sent via overnight courier or registered or certified mail, return receipt requested, postage and express charges prepaid, and shall be considered delivered and effective upon delivery.

If to PHEAA:

Attention: _____

If to Institution:

Attention: _____

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 to the other party.

9. ASSIGNMENT

This Agreement 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).

10. ENTIRE AGREEMENT; AMENDMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter hereof, and supersedes all previous agreements, discussions and correspondence with respect thereto, and no representations, warranties or agreements, express or implied, of any kind with respect to such subject matter have been made by either party to the other, except as expressly set forth herein. This Agreement may not be amended, modified, superseded, or rescinded, except by a written instrument or document signed by PHEAA and Institution.

11. AUTHORITY

Each of the undersigned represent that he or she has the authority to execute this Agreement and legally bind the respective party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed as of the date first above written.

Pennsylvania Higher Education Assistance Agency

By: _____
Signature

Name

Title

Approved as to form and legality

PHEAA Legal Counsel

Approved as to form and legality

Pennsylvania Deputy Attorney General

Name of Institution

By: _____
Signature

Name

Title



Pennsylvania Higher Education Assistance Agency, 1200 North 7th Street, Harrisburg, PA 17102