

Action Item

California Student Aid Commission

Consideration of an operating agreement between the California Student Aid Commission, ECMC and EdFund for 2011-12

As part of the termination of the California Student Aid Commission's (Commission) guaranty agreement and the transition of the portfolio to Educational Credit Management Corporation (ECMC), the parties, including EdFund, executed an Operating Agreement which set forth the rights and obligations of the parties during the transition and which established that certain services would be provided by ECMC to support the Commission's operations. The Operating Agreement also included a provision that required that, prior to the expiration of the current Operating Agreement, the parties would negotiate in good faith for an extension of the agreement to provide services to the Commission in support of its programs.

The current Operating Agreement between the parties expires on September 30, 2011. The parties have spent the last several months evaluating the services currently provided and the services that may be necessary going forward and negotiated a proposed Operating Agreement for Commission review and approval.

The proposed Operating Agreement would commence October 1, 2011 and expire December 31, 2012. The general terms and conditions of the proposed 15-month Operating Agreement are substantially similar to those contained in the current agreement. Where changes were made, it was to reduce or eliminate certain obligations imposed on EdFund under the current Operating Agreement. For example, since EdFund is no longer providing employees as part of the transition, those provisions relating to the EdFund employee support of the transition have been deleted in the new Operating Agreement. The final version of the proposed Operating Agreement may be found at Tab 5.a. The redline/strikeout version showing the changes from the current Operating Agreement may be found at Tab 5.b.

The services provided to the Commission are found on Appendix 3 of the proposed Operating Agreement. For ease of reference, it has been placed at Tab 5.c in the agenda materials. Commission staff has negotiated with ECMC to maintain the current level of services, as well as, requested certain additional services in support of the Commission's operations. Among the new services requested and included in the proposed Operating Agreement are:

- Development of a downloadable Mobile App
- Web Development support services
- Additional Grant Delivery System Programming Support
- Financial Assistance with EdFund's Employment Development Department invoices

Recommendation: Authorize the Chair of the Commission to execute the proposed Operating Agreement between the Commission, ECMC and EdFund.

Responsible Person(s): Keri Faseler Tippins, General Counsel
Legal and Audit Services

Operating agreement dated September ____, 2011 between Educational Credit Management Corporation (ECMC), California Student Aid Commission and EdFund

This Operating Agreement ("Agreement") entered into this ____ day of September, 2011 and which shall be effective October 1, 2011, is by and between ECMC, a Minnesota not-for profit corporation with a principal place of business of 1 Imation Place, Oakdale, MN 55128, the California Student Aid Commission ("CSAC"), a California state agency with a principal place of business of 10834 International Drive, Rancho Cordova, CA 95670 and EdFund, a California nonprofit public benefit corporation with a mailing address of P.O. Box 125, Rancho Cordova, CA 95741-0125 (hereinafter collectively "Parties").

Whereas the Parties are committed to the smooth continuation of the transfer of guarantor services from CSAC to ECMC as directed by the U. S. Department of Education;

Whereas the Parties are committed to ensure the continuation of superior services to students, borrowers, schools, lenders and servicers;

Whereas the Parties are committed to protecting the interests of the U.S. taxpayers and provide the U.S. Department of Education with the information it needs for effective oversight of the FFEL Program;

Whereas to provide for the immediate and ongoing servicing of the CSAC-guaranteed portfolio, which has been transferred and assigned to ECMC by the U.S. Department of Education, the Parties desire to enter into this Operating Agreement to provide a framework of ongoing services to be provided by EdFund to ECMC during the time period when all data, services and operations are being transitioned to ECMC; and

Whereas to provide for the utilization of CSAC/EdFund assets by ECMC and to facilitate the provision of services in support of the CSAC administered programs on behalf of CSAC by ECMC, the Parties desire to enter into an ongoing relationship.

Now Therefore, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

I. Services to be provided to ECMC by EdFund.

- 1.1 Systems and Telecommunications Access and Support. EdFund and CSAC shall provide access to ECMC, including all ECMC employees located in California, to perform guarantor activities on the transferred portfolio, to the assets and data on the attached Exhibit 1, which is incorporated by reference herein, including without limitation the FAPS and FACS systems, telecommunications systems, automatic and predictive dialing devices and other systems necessary for successful servicing of those functions transitioned or to be transitioned to ECMC during the term of this Agreement. ECMC shall maintain and use all required confidentiality, physical and information security safeguards and requirements to protect the systems and software.
- 1.2 Transition Services. The Parties acknowledge and agree that as they mutually cooperate to transition the servicing for this portfolio to ECMC, that additional services necessary to reconcile and transition data and services may be identified and/or that services currently performed by EdFund under this Agreement may be transitioned directly to ECMC.
- 1.3 Quality of Work and Performance of Services to be in Compliance with Applicable Laws. All EdFund services to be provided to ECMC (i) shall be performed in a competent and professional manner, consistent with FFEL Program industry prevailing practices; (ii) shall be in compliance with all applicable federal and state laws and regulations, including without limitation the Higher Education Act of 1965, as amended and regulations thereto; and (iii) shall be in accordance with ECMC policies and procedures.
- 1.4 EdFund services from October 1, 2011-December 31, 2012. From October 1, 2011 through December 31, 2012, CSAC and EdFund shall operate and make available to ECMC at no additional charge, the assets identified on Exhibit 1 which is attached hereto and incorporated by reference and all related hard assets necessary to maintain, operate and support the system assets.

II. EdFund Requirements and Conditions to Provide Services to ECMC.

- 2.1 Independent Contractor. EdFund is an independent contractor, is qualified to provide the services contemplated herein, and is not (nor shall EdFund be deemed to be) an employee, affiliate, partner or participant in a joint venture with ECMC. Nothing contained herein shall create or be deemed to create any relationship between ECMC and EdFund other than that of principal and independent

contractor. EdFund shall dictate the manner in which the services to be performed under this agreement are performed, provided however that the work be completed in a satisfactory and timely manner in accordance with the requirements of ECMC. EdFund shall have no right, power or authority to create any contract or obligation, express or implied, on behalf of, in the name of, or binding on ECMC.

- 2.2 Taxes. EdFund shall be responsible for any taxes based upon the net worth, capital, net income, or franchise of EdFund or taxes imposed upon EdFund solely by reason of EdFund doing business in or being incorporated in any jurisdiction imposing such taxes. EdFund agrees to pay, and to hold ECMC harmless from and against, any penalty, interest, additional tax, or other charge that may be levied or assessed as a result of any delay by or failure of EdFund for any reason to pay any tax or file any tax return or tax information required by law, rule, or regulation, or by this Agreement, to be paid or filed by EdFund.
- 2.3 Employee Benefits. EdFund shall comply with the provisions of any Social Security or unemployment insurance laws, state or federal, as may be now or hereafter in force, applying to the services provided pursuant to this Agreement, and accepts exclusive liability and will hold ECMC harmless against any demands for such contributions.
- 2.4 No Subcontracting without ECMC consent. All services contemplated herein shall be performed by employees of EdFund or current subcontractors of EdFund. EdFund shall not enter into any additional subcontract or assign performance of any of the services (except to ECMC) to any other individual, firm or vendor without the express written consent of ECMC.
- 2.5 EdFund Responsibility for Third Party Providers and Subcontractors. In the event that EdFund uses any new subcontractor or third party provider for any service or portion of a service to be provided that accesses ECMC Confidential Information, as defined in the September 21, 2010 Non-Disclosure Agreement (hereinafter "NDA"), which is hereby incorporated by this reference and made part of this Agreement, EdFund shall ensure that said subcontractor or third party provider is, and shall be for the duration of the Agreement, bound in writing to confidentiality and security obligations that meet or exceed EdFund's obligations of security and confidentiality set forth in this Agreement. EdFund further agrees that it shall be responsible for and indemnify, defend and hold ECMC harmless from any damages incurred by ECMC as a result of EdFund's failure to obtain the new Subcontractor and/or third party provider's written

commitment to be bound by security and confidentiality requirements at least as stringent as those set forth in this Agreement.

- 2.6 Compliance with Federal and State Laws. EdFund shall comply with the provisions of all federal, state, and local statutes, regulations, ordinances, and orders applicable to the services that it provides pursuant to this Agreement, including, by way of illustration and not limitation, the Higher Education Act, Federal Bankruptcy Act, applicable provisions under the Gramm-Leach-Bliley Act, the FTC "Red Flag" rules, federal and state data protection and information security provisions, and all other applicable acts and regulations.
- 2.7 Compliance with ECMC general guidelines. EdFund shall be responsible for complying with ECMC policies and procedures. This section 2.8 is in no way intended to supersede EdFund's compliance with sections 1.5, 2.6 or 2.7 of this Agreement. Notwithstanding the foregoing, if EdFund is in compliance with one of ECMC's policies that is determined to be non-compliant with any applicable federal or state law or regulation, EdFund shall not be deemed in breach of section 1.5, 2.6 or 2.7. EdFund is not responsible for ensuring that ECMC's policies and procedures are in compliance with all applicable federal and/or state laws or regulations. This section does not relieve EdFund from complying with applicable CSAC and EdFund policies currently in effect. Any conflict between an ECMC policy and/or procedures and either an applicable CSAC or EdFund policy and/or procedures shall be resolved through the use of ECMC's policy and /or procedures. In that event, CSAC shall be promptly notified, in writing of the conflicting policy and/or procedure and the intent of EdFund to follow ECMC policy and/or procedures.

III. Fees for Services provided by EdFund.

- 3.1 Entire Fee. The services set forth in Appendix 3 shall constitute the full and sole compensation for all services performed by EdFund and EdFund shall not be reimbursed or compensated through any other means for any direct or indirect expenses incurred in the performance of services under this Agreement.

IV. Confidentiality of borrower data.

- 4.1 Confidentiality of borrower data. EdFund shall not use, or disclose borrower data, except that said information may be used solely for the provision of services as provided for in this Agreement. EdFund shall not re-disclose or reuse borrower data for any purpose

including without limitation any sharing of the information with affiliated entities of EdFund.

- 4.2 Compliance with ECMC policies for borrower data. EdFund shall follow ECMC policies with respect to the use of non-public personal information and will ensure that in all correspondence and communications with borrowers that do not legally require a social security number as part of the document or form, that all but the last four digits of the social security number are masked or that EdFund uses an account identifier that is not based upon the Borrower's social security number. Additionally, EdFund shall encrypt non-public personal information as that data is being exchanged in electronic formats ("data in transit").
- 4.3 ECMC Right to Audit. ECMC shall have the ability to audit EdFund's information security and privacy procedures and processes including but not limited to system security, relevant employee procedures and procedures for oral and written communications with borrowers upon fifteen (15) days prior written notice.
- 4.4 Copies of EdFund Audits. Upon written request, EdFund shall provide ECMC with copies of any studies or audits of EdFund's systems or procedures addressing information security protections for non-public personal borrower information.
- 4.5 Disaster Recovery and Business Continuity. EdFund represents that it has in place, and will have in place throughout the term of the Agreement, appropriate disaster recovery and business continuity arrangements to protect all data and systems and to provide for the prompt resumption of business operations in case of a disaster consistent with the existing disaster recovery plan.

V. ECMC Obligations to EdFund and Cooperation During Transition Period

- 5.1 ECMC shall support at no cost to EdFund, where necessary, EdFund's provision of services under this Agreement and any EdFund contractual obligations under this Agreement for which EdFund is dependent on ECMC as a result of a contract assignment during the transition. This includes, but is not limited to, providing access to any device or software required by EdFund. EdFund shall not be liable for any degradation in service levels resulting from ECMC's failure to comply with this provision.
- 5.2 Ratification of EdFund Assigned Contracts. ECMC hereby ratifies and agrees to be bound by the terms and conditions in each of the

contracts listed on Exhibit 4 and any other contract that may be assigned to ECMC in connection with the transition.

- 5.3 All ECMC employees accessing EdFund information systems or data shall comply with all EdFund information security standards, procedures, and policies.
- 5.4 ECMC shall provide, at no cost, administrative services to EdFund including but not limited to assistance with preparing Federal and State financial, personnel, program and vendor filings (e.g. IRS Forms 990, W-2, 1098-E and 1099) and respective audits. In addition, ECMC will assist EdFund in addressing benefit matters and 401(k) matters including plan filings, terminations, and audits. The EdFund Board of Directors may enter into a contract with an independent contractor of their choosing for the purpose of receiving advice, counsel, and general oversight for the activities and services being provided by ECMC to EdFund pursuant to this section. Provided that said contract is entered into prior to September 1, 2012, ECMC agrees to pay \$50,000 for the term of the contract.
- 5.5 EdFund Assets. ECMC acknowledges and agrees that certain assets used during the term of this Agreement are owned by EdFund for the benefit of CSAC. ECMC agrees to manage such assets with the same duty of care as if the assets were owned by ECMC, and to use and administer such assets only for purposes allowed herein and in conformance with California state law and EdFund policies. Under no circumstances shall EdFund equipment provided under the terms of this Agreement be disposed of in any way without prior written authorization from EdFund or its successor. Upon termination, such assets must be returned to EdFund or its successor prior to the termination effective date or any extension thereof. The Parties agree to cooperate to identify any other physical and technical assets owned by CSAC or EdFund that ECMC may need to fulfill its obligations under this agreement.
- 5.6 Mutual Access. Subject to the confidentiality provisions herein and to the NDA, the Parties shall cooperate with each other to provide reasonable mutual access to records, data, systems and processes needed by ECMC and EdFund during the term of this Agreement..
- 5.7 Cooperation for Transitioned services. The Parties acknowledge that the successful transition of accounts and services during the term of this Agreement require that the Parties cooperate and communicate with each other to ensure that necessary functions are performed and to minimize disruption to students, borrowers, lenders and schools. ECMC, CSAC and EdFund shall designate operational liaisons

responsible for facilitating this cooperation and communication. In the event that there is a dispute as to timing, or a transition process or procedure, EdFund and ECMC will attempt to resolve the dispute utilizing input from both companies. In the event that the Parties are unable to resolve a dispute during the term of the Agreement, with the exception of disputes regarding payments or amounts due or the interpretation of this Agreement, ECMC in its discretion shall have the authority to determine all matters subject to its responsibilities as transferee guarantor of the CSAC portfolio.

VI. CSAC Obligations and Grant of License Rights to ECMC

- 6.1 Systems and Telecommunications Access and Support. CSAC shall provide, and shall continue to authorize EdFund to provide access to ECMC, including all ECMC employees located in California to perform guarantor activities on the transferred portfolio, to the assets and data on the attached Exhibit 1 which is incorporated by reference herein, including without limitation the FAPS and FACS system, telecommunications systems, automatic and predictive dialing devices and other systems, including applications and content currently on EdFund's website and the url edfund.org, necessary for successful servicing of those functions transitioned or to be transitioned to ECMC during the term of this Agreement. ECMC shall maintain and use all required confidentiality, physical and information security safeguards and requirements to protect said systems and software.

- 6.2 Grant of License to Software. CSAC hereby grants to ECMC a perpetual, irrevocable, royalty-free, fully paid, non-exclusive license and right (i) to use and copy, and/or have used or copied the software as listed in the attached Exhibit 2 which is incorporated by reference herein; and (ii) to prepare, use, copy and modify, and/or have prepared, used, copied and modified, derivative and/or other works based on and/or compatible with the software provided for in Exhibit 2 for ECMC's Internal Business Purposes, except that ECMC shall have no right to sublicense, distribute copies of or otherwise provide the Software or use thereof to any third party other than an affiliate of ECMC without the prior written consent of CSAC. As used in this Agreement, "Internal Business Purposes" means the use of Software and other works by or for ECMC or its Affiliates for purposes of conducting ECMC's or its Affiliates' business(es) or operations which shall include ECMC's provision of services to third parties, including without limitation, other student loan guarantors at the request of the Secretary of the U. S. Department of Education.

- (i) Source and Object Code. CSAC shall, to the extent possible, provide ECMC with certain source and object code for the Software for the purpose of allowing ECMC to maintain, prepare derivative works of, enhance or modify the Software.

6.3 Intellectual Property Rights of Third Parties. CSAC represents and warrants that the system access to be provided to ECMC pursuant to this Agreement shall not infringe upon or violate any license agreement or intellectual property or other proprietary rights of any third party and shall indemnify and hold ECMC harmless from any claims for damages arising from or related to the system access that CSAC shall provide pursuant to this Agreement. There shall be no limitation of liability of CSAC to ECMC and the resulting indemnification of ECMC under this provision, for damages sustained by ECMC as a result of CSAC's obligation to indemnify ECMC for claimed violations of Intellectual Property rights of third parties. This section 6.3 shall survive the termination or expiration of this Agreement.

6.4 "Fund Your Future" Materials and other CSAC owned publications. ECMC acknowledges that CSAC retains exclusive control of the "Fund Your Future" name and the content of all CSAC owned publications. CSAC grants ECMC and its Affiliates, for the term of this Agreement, a royalty-free, limited right to use and distribute copies of the "Fund Your Future" materials for purposes of conducting ECMC's or its Affiliates' business(es). ECMC agrees that it will not modify or create derivative works of these materials without the advance written approval of CSAC. ECMC acknowledges that the copyright and title to the "Fund Your Future" materials and any trademarks, service marks, or any other intellectual property rights relating thereto remain with CSAC. Any rights not expressly granted in this Agreement are reserved to CSAC.

VII. Employees

7.1 Responsibility for Employees. CSAC, EdFund and ECMC agree that each shall be solely responsible for the selection, training, compensation, licensing, direction and discipline of its respective employees, and for the acts, and omissions of its respective employees, agents, or assignees. CSAC, EdFund and ECMC agree that its respective employees will comply with all federal and state laws and regulations regarding employment matters. Each party agrees to reasonably cooperate in the event of any disputes, claims, allegations, or controversies involving employees of the other parties.

VIII. ECMC Administrative Services to CSAC to Support CSAC Administered Programs

- 8.1 ECMC Services. In exchange for the license rights granted to ECMC by CSAC in Article 6 of this Agreement, ECMC shall provide at no cost to CSAC commencing October 1, 2011 and for the term of this Agreement, services for the CSAC administered programs which shall consist of those services outlined on the attached Exhibit 3 which shall be incorporated by reference herein.
- 8.2 Independent Contractor. ECMC is an independent contractor, is qualified to provide the services contemplated herein, and is not (nor shall ECMC be deemed to be) an employee, agent, affiliate, partner or participant in a joint venture with CSAC. Nothing contained herein shall create or be deemed to create any relationship between CSAC and ECMC other than that of principal and independent contractor for the services subject to this Agreement. ECMC shall dictate the manner in which the services to be performed under this agreement are performed, provided however that the work be completed in a satisfactory and timely manner in accordance with the requirements of CSAC. ECMC shall have no right, power or authority to create any contract or obligation, express or implied, on behalf of, in the name of, or binding on CSAC.
- 8.3 No Subcontracting without CSAC consent. All services contemplated under this Article shall be performed by employees of ECMC. ECMC shall not subcontract or assign performance of any of the services to any other individual, firm or vendor without the express written consent of CSAC.
- 8.4 Insurance Coverage. ECMC shall at all times during the term of this Agreement and for a period of three years following Contract termination, maintain at its own expense insurance coverage of at least the following levels:
- (i) Malpractice ("errors and omissions") Insurance with limits of not less than Three Million Dollars (\$3,000,000) for each occurrence and in the aggregate. In the event that this insurance coverage is written on a "claims made" basis, and in the event that the insurance coverage is cancelled or not renewed or this Agreement is terminated, ECMC shall purchase extended reporting period coverage (discovery tail) of at least three years in duration from the point coverage is cancelled or non-renewed or this Agreement is terminated. In the event that ECMC's "claims made" policy is

changed from one carrier to another, then ECMC shall obtain a retroactive coverage date consistent with covering the activities it has conducted for CSAC.

- (ii) General liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence which shall include at least commercial general liability insurance issued on an "occurrence" basis with CSAC named as an additional insured.
- (iii) Insurance coverage for privacy and information security breaches, notification costs and for any damages or claims arising out of a privacy and/or information security breach incident in the amount of not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate. CSAC shall be named as an additional insured for this coverage. In the event that this coverage is written on a "claims made" basis, and in the event that the insurance coverage is cancelled or not renewed or this Agreement is terminated, ECMC shall purchase extended reporting coverage (discovery tail) of at least three years in duration from the point coverage is cancelled or non renewed or this Agreement is terminated.
- (iv) Workers Compensation insurance with limits as required by law.

All coverage required herein shall be taken out and maintained in responsible companies or financial institutions selected by ECMC. Upon request, ECMC shall provide CSAC with complete copies of all such certificates of insurance, bonds, and letters of credit, as they exist from time to time. Each policy or bond shall provide that the insurer shall not cancel coverage or refuse to renew such policy or bond, or reduce or limit the scope of coverage thereunder, without giving written notice to CSAC, and other named insured's, if applicable, at least thirty (30) days before the cancellation, non-renewal, or change becomes effective.

8.5 CSAC Assets. ECMC acknowledges and agrees that certain assets used during the term of this Agreement are owned by CSAC. ECMC agrees to manage such assets with the same duty of care as if the assets were owned by ECMC, and to use and administer such assets only for purposes allowed herein and in conformance with California state law. ECMC shall comply with the policies and procedures regarding state-owned property accounting as set forth in State Administrative Manual section 8640, et. seq. CSAC equipment furnished pursuant to the terms of this Agreement shall be identified with an appropriate identification tag and brand name, cost, date of purchase, identification or serial number, etc. listed on an Equipment

Inventory Report. The parties agree to cooperate to identify any other physical and technical assets owned by CSAC or EdFund that ECMC may need to fulfill its obligations under this agreement.

- 8.6 Disposition of CSAC Assets. Under no circumstances shall equipment provided under the terms of this Agreement be disposed of in any way without prior written authorization from CSAC. Upon termination, such assets must be returned to CSAC prior to the termination effective date.

IX. Confidentiality of CSAC Program Information and Student Data

- 9.1 Confidentiality of CSAC Program Information and Student Data. ECMC shall be responsible for maintaining the confidentiality and security of all CSAC Program and Student Data provided by CSAC to ECMC (hereafter "CSAC Program data") and shall restrict access to all said CSAC Program data (including without limitation all nonpublic personal information about the student) to those employees of ECMC who need to know the information to perform the services contemplated by this Agreement. ECMC shall not use, or disclose CSAC Program data, except that said information may be used solely for the provision of services as provided for in this Agreement. ECMC shall not re-disclose or reuse CSAC Program data for any purpose including without limitation any sharing of the information with affiliated entities of ECMC. ECMC represents and warrants to CSAC that it maintains physical, electronic and procedural safeguards in compliance with federal regulations to maintain the confidentiality and security of CSAC Program data (including nonpublic personal information regarding students).
- 9.2 Compliance with CSAC policies for CSAC Program data. ECMC shall follow CSAC policies with respect to the use of non-public personal information and will insure that in all correspondence and communications with student that do not legally require a social security number as part of the document or form, that all but the last four digits of the social security number are masked or that ECMC uses an account identifier that is not based upon the student's full social security number. Additionally, ECMC shall encrypt non-public personal information as that data is being exchanged in electronic formats ("data in transit").
- 9.3 Breach Notification. In the event that ECMC becomes aware of an actual or potential breach regarding CSAC Program data, ECMC shall immediately notify CSAC of the incident and, if ECMC's negligence was the actual and proximate cause of the breach, it shall take all reasonable steps to remedy the situation including but not limited to

the costs of notification to affected individuals, provision of credit monitoring services for affected individuals for a period of time not less than 12 months. This section 9.3 shall survive the termination or expiration of this Agreement.

- 9.4 CSAC Right to Audit. CSAC, or another California state entity on CSAC's behalf shall have the ability to audit ECMC's information security and privacy procedures and processes, solely as they relate to ECMC's provision of services to CSAC, including but not limited to system security, employee procedures and procedures for oral and written communications with Cal Grant recipients.
- 9.5 Disaster Recovery and Business Continuity. ECMC represents that it has in place, and will have in place throughout the term of the Agreement, appropriate disaster recovery and business continuity arrangements to protect all data and systems and to provide for the prompt resumption of business operations in case of a disaster.

X. Warranties and Indemnification

- 10.1 EdFund Warranties. EdFund represents and warrants to ECMC (i) that it has and shall have full power and authority to enter into and perform under this Agreement; (ii) that the hardware and software systems shall operate and be usable by ECMC during the term of this Agreement, however EdFund shall not be liable for any downtime of systems resulting from the activities of ECMC employees; (iii) that no other person or entity has any rights that would prevent ECMC's full use and enjoyment of the services in accordance with the terms and conditions of this Agreement; and (iv) that the provision of services as set forth in this Agreement does not and shall not violate any patent, copyright or create any liability to any third party.
- 10.2 CSAC Warranties. CSAC represents and warrants to ECMC (i) that it has and shall have full power and authority to enter into and perform under this Agreement; (ii) that no other person or entity has any rights that would prevent ECMC's full use and enjoyment of the license rights granted to ECMC under the terms of this Agreement; (iii) that the granting of the license rights to ECMC does not and shall not violate any patent, copyright or other right of any third party or create any liability to any third party; and (iv) it has authorized EdFund to perform all necessary actions and obligations under this Agreement.
- 10.3 ECMC Warranties. ECMC represents and warrants that it has and shall have full power and authority to enter into and perform under this Agreement; (ii) represents and warrants to CSAC that the services

shall be performed in a competent, professional, non-negligent manner by qualified personnel; and (iii) that it maintains all applicable insurance policies including but not limited to Workers Compensation Insurance.

10.4 EdFund Indemnification. If the acts or omissions of the employees, agents or assignees of EdFund under this Agreement are the proximate cause of any claim or action brought against ECMC and for any damages, loss, claims or expenses arising out of EdFund's failure to comply with any provision of this Agreement, EdFund will indemnify and hold ECMC harmless from all damages, loss, liability, including reasonable attorneys fees. However, in no event shall EdFund, its affiliates or any of its directors, officers, employees, or agents be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, regardless of whether the damages were foreseeable or whether EdFund was advised of the possibility of the damages. EdFund's cumulative liability for all losses and liability, including paragraph 4.3, above shall not exceed the amount earned (or to be earned) by EdFund as fees under this Agreement. EdFund will assume full responsibility for defense and all costs of said action and the payment of any resulting judgment or settlement. EdFund shall promptly notify ECMC of all claims or counterclaims naming ECMC as a party and shall forward copies of all relevant documents to ECMC in a timely manner. EdFund shall consult with ECMC regarding the disposition of each such claim or action. EdFund shall reasonably cooperate with ECMC's counsel and or insurance carrier regarding any such claims or actions and the proposed disposition of said claims. This section 10.4 shall survive the termination of this Agreement.

10.5 ECMC Indemnification. If the acts or omissions of the employees, agents or assignees of ECMC are the proximate cause of any claim or action brought against CSAC or EdFund and for any damages, loss, claims or expenses arising out of ECMC's failure to comply with any provision of this Agreement, ECMC will indemnify and hold CSAC and EdFund harmless from all damages, loss liability, including reasonable attorneys fees. This shall include, but is not limited to, any actions that may be brought against CSAC or EdFund resulting from any contract assignment to ECMC as part of the transition process. However, in no event shall ECMC, its affiliates or any of its directors, officers, employees, or agents be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, regardless of

whether the damages were foreseeable or whether ECMC was advised of the possibility of the damages. ECMC will assume full responsibility for defense and all costs of such action and the payment of any resulting settlement or judgment. ECMC's cumulative liability for all losses and liability, including paragraph 4.3, to CSAC and EdFund shall not exceed the amount paid by ECMC pursuant to Article III of this Agreement. ECMC shall promptly notify CSAC or EdFund of all claims or counterclaims naming CSAC or EdFund as a party and shall forward copies of all relevant documents to CSAC or EdFund in a timely manner. ECMC shall consult with CSAC or EdFund regarding the disposition of each such claim or action. ECMC shall reasonably cooperate with CSAC's or EdFund's counsel and/or insurance carrier regarding any such claim or action and the proposed disposition of said claim. This section 10.5 shall survive the termination of this Agreement.

XI. Term and Termination Provisions

- 11.1 Term. This Agreement shall commence on October 1, 2011 and shall continue through December 31, 2012 unless modified or terminated by the Parties. It is expressly understood and acknowledged by the Parties that the level of services to be provided by EdFund shall be reduced and modified during the term of this Agreement as functions are transitioned to ECMC.
- 11.2 Secretary's Right to Terminate. Notwithstanding any provisions of this Agreement to the contrary, the Secretary for the U.S. Department of Education may, pursuant to the provisions of 20 U.S.C. § 1072, terminate this Agreement upon thirty (30) days advance written notice of termination to CSAC, EdFund and ECMC if the Secretary determines that this Agreement includes an impermissible transfer or use of reserve funds or assets, or is otherwise inconsistent with the terms or purposes of 20 U.S.C. § 1072. The date specified by the Secretary shall be the termination effective date.
- 11.3 Termination with Cause by ECMC. ECMC reserves the right to immediately terminate this Agreement upon written notice specifying the termination effective date if ECMC has reason to believe EdFund has ceased to perform the services contemplated herein, or has materially breached any provision of the Agreement. EdFund shall return all ECMC files, reports, documents and other materials to ECMC within thirty (30) days of receiving such notice to effectuate an orderly termination process. Termination by ECMC of the relationship with EdFund does not alter, amend or terminate the arrangement between ECMC and CSAC.

- 11.4 Termination by CSAC. CSAC reserves the right to terminate this Agreement without cause subject to thirty (30) days advance written notice to ECMC. CSAC reserves the right to immediately terminate Article VII of this Agreement upon written notice specifying the termination effective date if CSAC has reason to believe ECMC has ceased to perform the services contemplated therein, or has breached any provision of the Agreement. ECMC shall return all files, reports, documents and other materials to CSAC within fifteen (15) days of receiving such notice to effectuate an orderly termination process. Termination by CSAC does not alter, amend or terminate the arrangement between ECMC and EdFund.
- 11.5 Federal Government Oversight. The Parties hereby acknowledge and agree that all transactions and services made pursuant to this agreement are subject to audit and review by the U.S. Department of Education, including but not limited to its Office of Inspector General, as well as the Government Accounting Office at their request.
- 11.6 The Parties agree that, prior to the expiration of this Agreement, they will negotiate in good faith for an extension of this Agreement to provide services to CSAC that will enable it to continue to support the CSAC administered programs.

XII. Miscellaneous Provisions

- 12.1 Entire Agreement. This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the subject matter hereof and cancels and supersedes all previous agreements and amendments between the Parties with respect to such subject matter. Notwithstanding the foregoing, this Agreement does not supersede the Operating Agreement between CSAC and EdFund or the confidentiality obligations in the NDA or any other information security agreements that have been executed by the parties during this transition. It is understood and agreed that no modifications or additions to the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto.
- 12.2 Access to Information and Audits. EdFund agrees that ECMC or its designee shall, upon written request, have reasonable access to applicable records as necessary, to monitor and verify compliance with all provisions of this Agreement. EdFund shall provide at no cost to ECMC direct access to all ECMC loans via remote access from ECMC's offices.

- 12.3 Audited Financial Statements and Compliance Audits. During the term of this Agreement, EdFund shall, within one hundred and eighty (180) days after the end of each of its fiscal years, send ECMC a copy of its, audited annual financial statement, including balance sheets, income statements and statements of changes in financial condition and a copy of the EdFund's compliance audit as a Third Party Servicer. The audited financial statements and compliance audit must adequately reflect EdFund's compliance with Third Party Servicer requirements.
- 12.4 Records. ECMC shall receive from EdFund and CSAC all Federal Family Education Loan Program records related to the CSAC-guaranteed portfolio transferred to ECMC and which had been serviced by EdFund, including without limitation copies of all financial records, federal filings, correspondence and individual borrower records. These records shall be maintained by ECMC in accordance with Federal Regulation and ECMC's Record Retention and Document Destruction Policy. EdFund agrees to maintain any EdFund financial and corporate records.
- 12.5 Headings. The headings set forth in this Agreement are used solely for convenience and shall not be deemed to limit the subject matter or be considered in the interpretation hereof.
- 12.6 Notices. Any demand, communication or notice required or permitted hereunder shall be effective if either: (i) hand-delivered to the addressee, or (ii) deposited in the United States mail, registered or certified, return receipt requested and postage prepaid, or delivered to a private express company addressed to the addressee (A) as follows:

in the case of ECMC:

Janice A. Hines
President
Educational Credit Management Corporation
Information Place
Building 2
Oakdale, MN 55128

in the case of EdFund:

Enrique Murillo, Chair
EdFund
c/o California Student Aid Commission
10834 International Drive
Rancho Cordova, CA 95670

in the case of CSAC:

Diana Fuentes-Michel
Executive Director
California Student Aid Commission
10834 International Drive
Rancho Cordova, CA 95670;

or (B) if the addressee has provided the other in writing with a change of address, at the last address so provided. Any notice, communication or demand made as provided in this paragraph shall be deemed given and received on the earlier of: (i) the date actually received; or (ii) the date of delivery, refusal of delivery, or non-delivery as indicated on the return receipt, if sent by mail or private express as provided above, or (iii) five (5) calendar days after first class mailing to the addressee.

- 12.7 No waiver. No failure or delay on the part of any Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.
- 12.8 Assignment. No Party may assign this Agreement without the express written consent of the other Parties.
- 12.9 Jurisdiction and Governing Law. This Agreement shall be construed in accordance with and be governed by the internal laws of the State of California without reference to conflict of laws principles. All litigation arising out of or relating to this contract shall be brought in a state or federal court of competent jurisdiction in the State of California and each party consents to personal jurisdiction and venue in such courts.
- 12.10 Assignees and Successors. All covenants, agreements, representations and warranties herein contained shall extend to, inure to the benefit of and be obligatory upon all assignees and successors of the respective Parties hereto and the representations, warranties, covenants and indemnities herein contained shall survive the termination of this Agreement, but shall not be deemed to have been made with respect to any period of time subsequent to the termination of this Agreement.

- 12.11 Inoperative or Unenforceable Provisions. If any immaterial provision of this Agreement shall be held to be inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable as applied in any other situation, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more immaterial phrases, sentences, clauses or paragraphs herein contained shall not affect the remaining portions of this Agreement or any part hereof.
- 12.12 Non-exclusive Remedies. No remedy by the terms of this Agreement conferred upon or reserved to either party hereto is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity (including, without limitation the right to equitable relief by way of injunction), or by statute on or after the date of this Agreement.
- 12.13 No Third-Party Beneficiaries. ECMC, CSAC nor EdFund and each of their respective officers, directors, employees and agents shall not have any duties or responsibilities to, or any fiduciary or third-party relationship with any individual, entity, or authority, except as expressly set forth in this Agreement.
- 12.14 Force Majeure. No Party shall be liable for any delay or failure in performing any obligation under this Agreement where the cause for such failure or delay is beyond their reasonable control. Such acts include, but are not limited to, acts of God, war, terrorism, riot, pandemic illness, third-party labor disputes, third-party strikes or lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies or governmental action.
- 12.15 Counterparts. This Agreement shall become effective upon execution and delivery by all parties. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
- a. Authority. Each Party represents and warrants that it has the requisite authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties have executed this Operating Agreement effective as of October 1, 2011.

Educational Credit Management Corporation

EdFund

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

California Student Aid Commission,

By: _____

Its: _____

Date: _____

Operating agreement dated ~~October~~September ____, ~~2010~~2011 between Educational Credit Management Corporation (ECMC), California Student Aid Commission and EdFund

This Operating Agreement ("Agreement") entered into this ___ day of ~~October~~September, ~~2010~~2011 and which shall be effective ~~November~~October 1, ~~2010~~2011, is by and between ECMC, a Minnesota not-for profit corporation with a principal place of business of 1 Imation Place, Oakdale, MN 55128, the California Student Aid Commission ("CSAC"), a California state agency with a principal place of business of 10834 International Drive, Rancho Cordova, CA 95670 and EdFund, a California nonprofit public benefit corporation with a ~~principal place of business mailing address~~ of ~~10370 Peter McCuen Blvd.P.O. Box 125, Mather Rancho Cordova, CA 95655 95741-0125~~ (hereinafter collectively "Parties").

Whereas the Parties are committed to the smooth continuation of the transfer of guarantor services from CSAC to ECMC as directed by the U. S. Department of Education;

Whereas the Parties are committed to ensure the continuation of superior services to students, borrowers, schools, lenders and servicers;

Whereas the Parties are committed to protecting the interests of the U.S. taxpayers and provide the U.S. Department of Education with the information it needs for effective oversight of the FFEL Program;

Whereas to provide for the immediate and ongoing servicing of the CSAC-guaranteed portfolio, which has been transferred and assigned to ECMC by the U.S. Department of Education, the Parties desire to enter into this Operating Agreement to provide a framework of ongoing services to be provided by EdFund to ECMC during the time period when all data, services and operations are being transitioned to ECMC; and

Whereas to provide for the utilization of CSAC/EdFund assets by ECMC and to facilitate the provision of services in support of the CSAC administered programs on behalf of CSAC by ECMC, the Parties desire to enter into an ongoing relationship.

Now Therefore, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

I. Services to be provided to ECMC by EdFund.

~~1.1 Core Guarantor Services. EdFund shall provide to ECMC, guarantor services that the Parties agree will be at a minimum consistent with those services and service levels currently provided to CSAC under the CSAC/EdFund Operating Agreement as extended and amended from time to time, or as required by ECMC to be consistent with ECMC policies, procedures and service levels. During the term of this Operating Agreement, the Parties shall cooperate to make sure that all services provided shall be at current or superior service levels so that there is no degradation of services provided to students, borrowers, schools, lenders and servicers. Notwithstanding the foregoing, EdFund shall not be responsible for any degradation in the service levels that may result from the ongoing transition activities. The guarantor services to be provided, include but are not limited to:~~

- ~~A. Guarantee services

 - ~~1. Disbursement servicing~~
 - ~~2. Guarantee maintenance~~
 - ~~3. CAM reporting and loan maintenance~~
 - ~~4. Title IV letters~~
 - ~~5. Repurchase processing and management~~
 - ~~6. Customer services~~
 - ~~7. Foreign school reporting~~
 - ~~8. Ongoing processing of bankruptcy transfers to ECMC~~~~
- ~~B. Default aversion and prevention~~
- ~~C. Claims review and processing~~
- ~~D. Financial and accounting processing and reporting~~
- ~~E. Government reporting~~
- ~~F. School and lender compliance reviews~~
- ~~G. Imaging and records management~~
- ~~H. Security

 - ~~1. Protection of data~~
 - ~~2. Cooperation with ECMC and the U.S. Department of Education on physical and data security review~~~~
- ~~I. Information technology

 - ~~1. Ongoing operation and management of all EdFund information technology, communications and data systems.~~
 - ~~2. Cooperation in transition and conversion of data to ECMC systems.~~~~
- ~~J. Ombudsman research~~

~~1.2 Support Services. EdFund shall provide to ECMC and ECMC employees those support services necessary to fully provide guarantor services which shall include but not be limited to publications, communications, telecommunications, administrative support,~~

~~printing, supplies, purchasing, financial support, and appropriate facilities.~~

~~1.31.1~~ 1.31.1 Systems and Telecommunications Access and Support. EdFund and CSAC shall provide access to ECMC, including all ECMC employees located in California, to perform guarantor activities on the transferred portfolio, to the assets and data on the attached Exhibit 1, which is incorporated by reference herein, including without limitation the FAPS and FACS systems, telecommunications systems, automatic and predictive dialing devices and other systems necessary for successful servicing of those functions transitioned or to be transitioned to ECMC during the term of this Agreement. ECMC shall maintain and use all required confidentiality, physical and information security safeguards and requirements to protect the systems and software.

~~1.41.2~~ 1.41.2 Transition Services. The Parties acknowledge and agree that as they mutually cooperate to transition the servicing for this portfolio to ECMC, that additional services necessary to reconcile and transition data and services may be identified and/or that services currently performed by EdFund under this Agreement may be transitioned directly to ECMC. ~~as EdFund or CSAC employees assigned to work at EdFund are hired by ECMC to staff an ECMC California office. Accordingly, ECMC and EdFund agree to cooperate in the transition of any necessary guarantor services and to mutually agree to appropriate fee adjustments as a result of any increased or decreased activities.~~

~~1.51.3~~ 1.51.3 Quality of Work and Performance of Services to be in Compliance with Applicable Laws. All EdFund services to be provided to ECMC (i) shall be performed in a competent and professional manner, consistent with FFEL Program industry prevailing practices; (ii) shall be in compliance with all applicable federal and state laws and regulations, including without limitation the Higher Education Act of 1965, as amended and regulations thereto; and (iii) shall be in accordance with ECMC policies and procedures.

~~1.61.4~~ 1.61.4 EdFund services from December 120, 2010-September 30December 31, 2011-2012. From ~~December 20~~October 1, 2010-2011 through ~~September 30~~December 31, 2011-2012, CSAC and EdFund shall operate and make available to ECMC at no additional charge, the assets identified on Exhibit 1 which is attached hereto and incorporated by reference and all related hard assets necessary to maintain, operate and support the system assets.

II. EdFund Requirements and Conditions to Provide Services to ECMC.

- 2.1 Independent Contractor. EdFund is an independent contractor, is qualified to provide the services contemplated herein, and is not (nor shall EdFund be deemed to be) an employee, affiliate, partner or participant in a joint venture with ECMC. Nothing contained herein shall create or be deemed to create any relationship between ECMC and EdFund other than that of principal and independent contractor. EdFund shall dictate the manner in which the services to be performed under this agreement are performed, provided however that the work be completed in a satisfactory and timely manner in accordance with the requirements of ECMC. EdFund shall have no right, power or authority to create any contract or obligation, express or implied, on behalf of, in the name of, or binding on ECMC.
- 2.2 Taxes. EdFund shall be responsible for any taxes based upon the net worth, capital, net income, or franchise of EdFund or taxes imposed upon EdFund solely by reason of EdFund doing business in or being incorporated in any jurisdiction imposing such taxes. EdFund agrees to pay, and to hold ECMC harmless from and against, any penalty, interest, additional tax, or other charge that may be levied or assessed as a result of any delay by or failure of EdFund for any reason to pay any tax or file any tax return or tax information required by law, rule, or regulation, or by this Agreement, to be paid or filed by EdFund. ~~Notwithstanding the foregoing, ECMC shall reimburse EdFund for all federal or state sales and use taxes that are paid by EdFund for all services provided under this Agreement from November 1, 2010 through December 19, 2010.~~
- 2.3 Employee Benefits. EdFund shall comply with the provisions of any Social Security or unemployment insurance laws, state or federal, as may be now or hereafter in force, applying to the services provided pursuant to this Agreement, and accepts exclusive liability and will hold ECMC harmless against any demands for such contributions.
- 2.4 No Subcontracting without ECMC consent. All services contemplated herein shall be performed by employees of EdFund or current subcontractors of EdFund. EdFund shall not enter into any additional subcontract or assign performance of any of the services (except to ECMC) to any other individual, firm or vendor without the express written consent of ECMC.
- 2.5 EdFund Responsibility for Third Party Providers and Subcontractors. In the event that EdFund uses any new subcontractor or third party provider for any service or portion of a service to be provided that

accesses ECMC Confidential Information, as defined in the September 21, 2010 Non-Disclosure Agreement (hereinafter "NDA"), which is hereby incorporated by this reference and made part of this Agreement, EdFund shall ensure that said subcontractor or third party provider is, and shall be for the duration of the Agreement, bound in writing to confidentiality and security obligations that meet or exceed EdFund's obligations of security and confidentiality set forth in this Agreement. EdFund further agrees that it shall be responsible for and indemnify, defend and hold ECMC harmless from any damages incurred by ECMC as a result of EdFund's failure to obtain the new Subcontractor and/or third party provider's written commitment to be bound by security and confidentiality requirements at least as stringent as those set forth in this Agreement.

~~2.6 EdFund as Third Party Servicer under the Higher Education Act. EdFund acknowledges that as a servicer providing services for a guaranty agency under the FFEL Program, it is subject to the regulations contained in 34 C.F.R. parts 668 and 682 relating to Third Party Servicers. EdFund agrees to be bound by and comply with said regulatory provisions. If at any time during the effective period of this Agreement, EdFund ceases to be qualified as a Third Party Servicer under the FFEL Program, or is subject to a fine, limitation, suspension, or termination proceeding by the Secretary for the U. S. Department of Education (Secretary), EdFund must notify ECMC of this fact in writing within ten (10) days of EdFund's receipt of notice of the institution of said proceedings.~~

~~2.7~~ 2.6 Compliance with Federal and State Laws. EdFund shall comply with the provisions of all federal, state, and local statutes, regulations, ordinances, and orders applicable to the services that it provides pursuant to this Agreement, including, by way of illustration and not limitation, the Higher Education Act, Federal Bankruptcy Act, applicable provisions under the Gramm-Leach-Bliley Act, the FTC "Red Flag" rules, federal and state data protection and information security provisions, and all other applicable acts and regulations.

~~2.8~~ 2.7 Compliance with ECMC general guidelines. EdFund shall be responsible for complying with ECMC policies and procedures. This section 2.8 is in no way intended to supersede EdFund's compliance with sections 1.5, 2.6 or 2.7 of this Agreement. Notwithstanding the foregoing, if EdFund is in compliance with one of ECMC's policies that is determined to be non-compliant with any applicable federal or state law or regulation, EdFund shall not be deemed in breach of section 1.5, 2.6 or 2.7. EdFund is not responsible for ensuring that

ECMC's policies and procedures are in compliance with all applicable federal and/or state laws or regulations. This section does not relieve EdFund from complying with applicable CSAC and EdFund policies currently in effect. Any conflict between an ECMC policy and/or procedures and either an applicable CSAC or EdFund policy and/or procedures shall be resolved through the use of ECMC's policy and /or procedures. In that event, CSAC shall be promptly notified, in writing of the conflicting policy and/or procedure and the intent of EdFund to follow ECMC policy and/or procedures.

~~2.9 Insurance Coverage. EdFund shall at all times during the term of this Agreement and for a period of three years following Contract termination, maintain at its own expense insurance coverage of at least the following levels:~~

~~(i) Malpractice ("errors and omissions") Insurance with limits of not less than Three Million Dollars (\$3,000,000) for each occurrence and in the aggregate. This amount shall in no way be construed as the limit of EdFund's liability for errors and omissions in the performance of its duties under this Agreement. In the event that this insurance coverage is written on a "claims made" basis, and in the event that the insurance coverage is cancelled or not renewed or this Agreement is terminated, EdFund shall purchase extended reporting period coverage (discovery tail) of at least three years in duration from the point coverage is cancelled or non-renewed or this Agreement is terminated. In the event that EdFund's "claims made" policy is changed from one carrier to another, then EdFund shall obtain a retroactive coverage date consistent with covering the activities it has conducted for ECMC.~~

~~(ii) General liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence which shall include at least commercial general liability insurance issued on an "occurrence" basis with ECMC named as an additional insured.~~

~~(iii) Insurance coverage for privacy and information security breaches, notification costs and for any damages or claims arising out of a privacy and/or information security breach incident consistent with the current limits for each occurrence and in the aggregate. ECMC must be named as an additional insured for this coverage. In the event that this coverage is written on a "claims made" basis, and in the event that the insurance coverage is cancelled or not renewed or this Agreement is terminated, EdFund shall purchase extended reporting coverage (discovery tail) of at least three years in duration from the point coverage is cancelled or non-renewed or this Agreement is terminated.~~

~~—(iv) Workers compensation insurance with limits as required by law.~~

~~All coverage required herein shall be taken out and maintained in responsible companies or financial institutions selected by EdFund. Upon request, EdFund shall provide ECMC with complete copies of all such certificates of insurance, bonds, and letters of credit, as they exist from time to time. Each policy or bond shall provide that the insurer shall not cancel coverage or refuse to renew such policy or bond, or reduce or limit the scope of coverage thereunder, without giving written notice to ECMC, and other named insured's, if applicable, at least thirty (30) days before the cancellation, non-renewal, or change becomes effective. At least twenty (20) days before the expiration of any policy, EdFund shall furnish ECMC evidence satisfactory to ECMC that the policy has been renewed or replaced by another policy conforming to the provisions of this section and that payment for such policy has been made.~~

III. Fees for Services provided by EdFund.

~~3.1 Pricing. From November 1, 2010 through December 19, 2010, ECMC shall reimburse EdFund for its reasonable operating expenses including but not limited to EdFund employee salaries and benefits, direct expenses, indirect expenses, and any additional expenses that are incurred as a result of the transition activities to provide the services detailed in this Agreement. Effective December 20, 2010, EdFund shall not receive additional compensation from ECMC for providing ongoing access to the systems and hard assets as detailed in Exhibit 1 for the balance of the term of this Agreement.~~

~~3.2 Late Payments. All EdFund invoices shall be due and payable by ECMC within fifteen (15) days of the applicable invoice date. A late charge equal to the lesser of (i) ten percent (10%) per annum or (ii) the maximum amount allowed by law will be assessed for all invoices over thirty (30) days past due, in addition to any costs, including but not limited to attorney fees, incurred in collecting any past due amounts and late fees.~~

~~3.3 Entire Fee. The ~~fees specified in section 3.1~~ services set forth in Appendix 3 shall constitute the full and sole compensation for all services performed by EdFund and EdFund shall not be reimbursed or compensated through any other means for any direct or indirect expenses incurred in the performance of services under this Agreement.~~

IV. Confidentiality of borrower data.

4.1 Confidentiality of borrower data. ~~EdFund shall be responsible for maintaining the confidentiality and security of all CSAC guaranteed borrower data in the accounts the U.S. Department of Education has directed be transferred and assigned to ECMC (hereafter "borrower data"). EdFund shall restrict access to all said borrower data (including without limitation all nonpublic personal information about borrower) to those employees and current contractors and/or agents of EdFund who need to know the information to perform the services contemplated by this Agreement. EdFund shall not use, or disclose borrower data, except that said information may be used solely for the provision of services as provided for in this Agreement. EdFund shall not re-disclose or reuse borrower data for any purpose including without limitation any sharing of the information with affiliated entities of EdFund. EdFund represents and warrants to ECMC that it will maintain its physical, electronic and procedural safeguards to maintain the confidentiality and security of borrower data (including nonpublic personal information regarding borrower). EdFund will implement any additional security controls that are requested by ECMC based on ECMC's review of EdFund's current security practices.~~

4.2 Compliance with ECMC policies for borrower data. EdFund shall follow ECMC policies with respect to the use of non-public personal information and will ensure that in all correspondence and communications with borrowers that do not legally require a social security number as part of the document or form, that all but the last four digits of the social security number are masked or that EdFund uses an account identifier that is not based upon the Borrower's social security number. Additionally, EdFund shall encrypt non-public personal information as that data is being exchanged in electronic formats ("data in transit").

~~4.3 Breach Notification and Indemnification. In the event that EdFund becomes aware of an actual or potential breach regarding borrower non public personal information, EdFund shall immediately notify ECMC of the incident and take all reasonable steps to remedy the situation including but not limited to the costs of notification to affected individuals, and in the case of an actual compromise of borrower non public personal information, provision of credit monitoring services for affected individuals for a period of time not less than 12 months, and all other costs and damages associated with the breach incident. Notwithstanding the preceding sentence, EdFund shall not be liable or responsible for costs associated with a breach caused by ECMC employees or ECMC contractors or ECMC consultants. EdFund agrees to indemnify and hold ECMC harmless for any and all damages (including ECMC's costs of defense and~~

~~reasonable attorneys fees) arising out of or related to the confidentiality or information security breach by EdFund involving borrower non-public personal information, regardless whether the cause of said breach was as the result of any conduct by EdFund or a third party service provider to EdFund. This section 4.3 shall survive the termination or expiration of this Agreement.~~

4.44.3 ECMC Right to Audit. ECMC shall have the ability to audit EdFund's information security and privacy procedures and processes including but not limited to system security, relevant employee procedures and procedures for oral and written communications with borrowers upon fifteen (15) days prior written notice.

4.54.4 Copies of EdFund Audits. Upon written request, EdFund shall provide ECMC with copies of any studies or audits of EdFund's systems or procedures addressing information security protections for non-public personal borrower information.

4.64.5 Disaster Recovery and Business Continuity. EdFund represents that it has in place, and will have in place throughout the term of the Agreement, appropriate disaster recovery and business continuity arrangements to protect all data and systems and to provide for the prompt resumption of business operations in case of a disaster consistent with the existing disaster recovery plan.

V. ECMC Obligations to EdFund and Cooperation During Transition Period

5.1 ECMC shall support at no cost to EdFund, where necessary, EdFund's provision of services under this Agreement and any EdFund contractual obligations under this Agreement for which EdFund is dependent on ECMC as a result of a contract assignment during the transition. This includes, but is not limited to, providing access to any device or software required by EdFund. EdFund shall not be liable for any degradation in service levels resulting from ECMC's failure to comply with this provision.

5.2 Ratification of EdFund Assigned Contracts. ECMC hereby ratifies and agrees to be bound by the terms and conditions in each of the contracts listed on Exhibit 4 and any other contract that may be assigned to ECMC in connection with the transition.

5.3 All ECMC employees accessing EdFund information systems or data shall comply with all EdFund information security standards, procedures, and policies.

- 5.4 ~~Commencing on December 20, 2010 through the end of the term of this Agreement, at EdFund's request,~~ ECMC shall provide, at no cost, administrative services to EdFund including but not limited to assistance with preparing Federal and State financial, personnel, program and vendor filings (e.g. IRS Forms 990, W-2, 1098-E and 1099) and respective audits. In addition, ECMC will assist EdFund in addressing benefit matters and 401(k) matters including plan filings, terminations, and audits. The EdFund Board of Directors may enter into a contract with an independent contractor of their choosing for the purpose of receiving advice, counsel, and general oversight for the activities and services being provided by ECMC to EdFund pursuant to this section. Provided that said contract is entered into prior to ~~March 1, 2011~~September 1, 2012, ECMC agrees to pay \$50,000 for the term of the contract.
- 5.5 EdFund Assets. ECMC acknowledges and agrees that certain assets used during the term of this Agreement are owned by EdFund for the benefit of CSAC. ECMC agrees to manage such assets with the same duty of care as if the assets were owned by ECMC, and to use and administer such assets only for purposes allowed herein and in conformance with California state law and EdFund policies. Under no circumstances shall EdFund equipment provided under the terms of this Agreement be disposed of in any way without prior written authorization from EdFund or its successor. Upon termination, such assets must be returned to EdFund or its successor prior to the termination effective date or any extension thereof. The Parties agree to cooperate to identify any other physical and technical assets owned by CSAC or EdFund that ECMC may need to fulfill its obligations under this agreement.
- 5.6 Mutual Access. Subject to the confidentiality provisions herein and to the NDA, the Parties shall cooperate with each other to provide reasonable mutual access to records, data, systems and processes needed by ECMC and EdFund during the term of this Agreement..
- 5.7 Cooperation for Transitioned services. The Parties acknowledge that the successful transition of accounts and services during the term of this Agreement require that the Parties cooperate and communicate with each other to ensure that necessary functions are performed and to minimize disruption to students, borrowers, lenders and schools. ECMC, CSAC and EdFund shall designate operational liaisons responsible for facilitating this cooperation and communication. In the event that there is a dispute as to timing, or a transition process or procedure, EdFund and ECMC will attempt to resolve the dispute utilizing input from both both companies. In the event that the

Parties are unable to resolve a dispute during the term of the Agreement, with the exception of disputes regarding payments or amounts due or the interpretation of this Agreement, ECMC in its discretion shall have the authority to determine all matters subject to its responsibilities as transferee guarantor of the CSAC portfolio.

VI. CSAC Obligations and Grant of License Rights to ECMC

- 6.1 Systems and Telecommunications Access and Support. CSAC shall provide, and shall continue to authorize EdFund to provide access to ECMC, including all ECMC employees located in California to perform guarantor activities on the transferred portfolio, to the assets and data on the attached Exhibit 1 which is incorporated by reference herein, including without limitation the FAPS and FACS system, telecommunications systems, automatic and predictive dialing devices and other systems, including applications and content currently on EdFund's website and the url edfund.org, necessary for successful servicing of those functions transitioned or to be transitioned to ECMC during the term of this Agreement. ECMC shall maintain and use all required confidentiality, physical and information security safeguards and requirements to protect said systems and software.
- 6.2 Grant of License to Software. CSAC hereby grants to ECMC a perpetual, irrevocable, royalty-free, fully paid, non-exclusive license and right (i) to use and copy, and/or have used or copied the software as listed in the attached Exhibit 2 which is incorporated by reference herein; and (ii) to prepare, use, copy and modify, and/or have prepared, used, copied and modified, derivative and/or other works based on and/or compatible with the software provided for in Exhibit 2 for ECMC's Internal Business Purposes, except that ECMC shall have no right to sublicense, distribute copies of or otherwise provide the Software or use thereof to any third party other than an affiliate of ECMC without the prior written consent of CSAC. As used in this Agreement, "Internal Business Purposes" means the use of Software and other works by or for ECMC or its Affiliates for purposes of conducting ECMC's or its Affiliates' business(es) or operations which shall include ECMC's provision of services to third parties, including without limitation, other student loan guarantors at the request of the Secretary of the U. S. Department of Education.
- (i) Source and Object Code. CSAC shall, to the extent possible, provide ECMC with certain source and object code for the

Software for the purpose of allowing ECMC to maintain, prepare derivative works of, enhance or modify the Software.

6.3 Intellectual Property Rights of Third Parties. CSAC represents and warrants that the system access to be provided to ECMC pursuant to this Agreement shall not infringe upon or violate any license agreement or intellectual property or other proprietary rights of any third party and shall indemnify and hold ECMC harmless from any claims for damages arising from or related to the system access that CSAC shall provide pursuant to this Agreement. There shall be no limitation of liability of CSAC to ECMC and the resulting indemnification of ECMC under this provision, for damages sustained by ECMC as a result of CSAC's obligation to indemnify ECMC for claimed violations of Intellectual Property rights of third parties. This section 6.3 shall survive the termination or expiration of this Agreement.

6.4 "Fund Your Future" Materials and other CSAC owned publications. ECMC acknowledges that CSAC ~~and EdFund~~ retains exclusive control of the "Fund Your Future" name and the content of all CSAC owned publications. CSAC grants ECMC and its Affiliates, for the term of this Agreement, a royalty-free, limited right to use and distribute copies of the "Fund Your Future" materials for purposes of conducting ECMC's or its Affiliates' business(es). ECMC agrees that it will not modify or create derivative works of these materials without the advance written approval of CSAC ~~and EdFund~~. ECMC acknowledges that the copyright and title to the "Fund Your Future" materials and any trademarks, service marks, or any other intellectual property rights relating thereto remain with CSAC ~~and/or EdFund~~. Any rights not expressly granted in this Agreement are reserved to CSAC ~~and/or EdFund~~.

VII. Employees

7.1 Responsibility for Employees. CSAC, EdFund and ECMC agree that each shall be solely responsible for the selection, training, compensation, licensing, direction and discipline of its respective employees, and for the acts, and omissions of its respective employees, agents, or assignees. CSAC, EdFund and ECMC agree that its respective employees will comply with all federal and state laws and regulations regarding employment matters. Each party agrees to reasonably cooperate in the event of any disputes, claims, allegations, or controversies involving employees of the other parties.

VIII. ECMC Administrative Services to CSAC to Support CSAC Administered Programs

- 8.1 ECMC Services. In exchange for the license rights granted to ECMC by CSAC in Article 6 of this Agreement, ECMC shall provide at no cost to CSAC commencing ~~December 20, 2010~~ October 1, 2011 and for the term of this Agreement, services for the CSAC administered programs which shall ~~be at a minimum consistent with the current service levels as provided by EdFund to CSAC and which shall~~ consist of those services outlined on the attached Exhibit 3 which shall be incorporated by reference herein.
- 8.2 Independent Contractor. ECMC is an independent contractor, is qualified to provide the services contemplated herein, and is not (nor shall ECMC be deemed to be) an employee, agent, affiliate, partner or participant in a joint venture with CSAC. Nothing contained herein shall create or be deemed to create any relationship between CSAC and ECMC other than that of principal and independent contractor for the services subject to this Agreement. ECMC shall dictate the manner in which the services to be performed under this agreement are performed, provided however that the work be completed in a satisfactory and timely manner in accordance with the requirements of CSAC. ECMC shall have no right, power or authority to create any contract or obligation, express or implied, on behalf of, in the name of, or binding on CSAC.
- 8.3 No Subcontracting without CSAC consent. All services contemplated under this Article shall be performed by employees of ECMC. ECMC shall not subcontract or assign performance of any of the services to any other individual, firm or vendor without the express written consent of CSAC.
- 8.4 Insurance Coverage. ECMC shall at all times during the term of this Agreement and for a period of three years following Contract termination, maintain at its own expense insurance coverage of at least the following levels:
- (i) Malpractice ("errors and omissions") Insurance with limits of not less than Three Million Dollars (\$3,000,000) for each occurrence and in the aggregate. In the event that this insurance coverage is written on a "claims made" basis, and in the event that the insurance coverage is cancelled or not renewed or this Agreement is terminated, ECMC shall purchase extended reporting period coverage (discovery tail) of at least three years in duration from

the point coverage is cancelled or non-renewed or this Agreement is terminated. In the event that ECMC's "claims made" policy is changed from one carrier to another, then ECMC shall obtain a retroactive coverage date consistent with covering the activities it has conducted for CSAC.

- (ii) General liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence which shall include at least commercial general liability insurance issued on an "occurrence" basis with CSAC named as an additional insured.
- (iii) Insurance coverage for privacy and information security breaches, notification costs and for any damages or claims arising out of a privacy and/or information security breach incident in the amount of not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate. CSAC shall be named as an additional insured for this coverage. In the event that this coverage is written on a "claims made" basis, and in the event that the insurance coverage is cancelled or not renewed or this Agreement is terminated, ECMC shall purchase extended reporting coverage (discovery tail) of at least three years in duration from the point coverage is cancelled or non renewed or this Agreement is terminated.
- (iv) Workers Compensation insurance with limits as required by law.

All coverage required herein shall be taken out and maintained in responsible companies or financial institutions selected by ECMC. Upon request, ECMC shall provide CSAC with complete copies of all such certificates of insurance, bonds, and letters of credit, as they exist from time to time. Each policy or bond shall provide that the insurer shall not cancel coverage or refuse to renew such policy or bond, or reduce or limit the scope of coverage thereunder, without giving written notice to CSAC, and other named insured's, if applicable, at least thirty (30) days before the cancellation, non-renewal, or change becomes effective.

- 8.5 CSAC Assets. ECMC acknowledges and agrees that certain assets used during the term of this Agreement are owned by CSAC. ECMC agrees to manage such assets with the same duty of care as if the assets were owned by ECMC, and to use and administer such assets only for purposes allowed herein and in conformance with California state law. ECMC shall comply with the policies and procedures regarding state-owned property accounting as set forth in State Administrative Manual section 8640, et. seq. CSAC equipment furnished pursuant to the terms of this Agreement shall be identified with an appropriate identification tag and brand name, cost, date of purchase,

identification or serial number, etc. listed on an Equipment Inventory Report. The parties agree to cooperate to identify any other physical and technical assets owned by CSAC or EdFund that ECMC may need to fulfill its obligations under this agreement.

- 8.6 Disposition of CSAC Assets. Under no circumstances shall equipment provided under the terms of this Agreement be disposed of in any way without prior written authorization from CSAC. Upon termination, such assets must be returned to CSAC prior to the termination effective date.

IX. Confidentiality of CSAC Program Information and Student Data

- 9.1 Confidentiality of CSAC Program Information and Student Data. ECMC shall be responsible for maintaining the confidentiality and security of all CSAC Program and Student Data provided by CSAC to ECMC (hereafter "CSAC Program data") and shall restrict access to all said CSAC Program data (including without limitation all nonpublic personal information about the student) to those employees of ECMC who need to know the information to perform the services contemplated by this Agreement. ECMC shall not use, or disclose CSAC Program data, except that said information may be used solely for the provision of services as provided for in this Agreement. ECMC shall not re-disclose or reuse CSAC Program data for any purpose including without limitation any sharing of the information with affiliated entities of ECMC. ECMC represents and warrants to CSAC that it maintains physical, electronic and procedural safeguards in compliance with federal regulations to maintain the confidentiality and security of CSAC Program data (including nonpublic personal information regarding students).

- 9.2 Compliance with CSAC policies for CSAC Program data. ECMC shall follow CSAC policies with respect to the use of non-public personal information and will insure that in all correspondence and communications with student that do not legally require a social security number as part of the document or form, that all but the last four digits of the social security number are masked or that ECMC uses an account identifier that is not based upon the student's full social security number. Additionally, ECMC shall encrypt non-public personal information as that data is being exchanged in electronic formats ("data in transit").

- 9.3 Breach Notification. In the event that ECMC becomes aware of an actual or potential breach regarding CSAC Program data, ECMC shall immediately notify CSAC of the incident and, if ECMC's negligence was the actual and proximate cause of the breach, it shall take all

reasonable steps to remedy the situation including but not limited to the costs of notification to affected individuals, provision of credit monitoring services for affected individuals for a period of time not less than 12 months. This section 9.3 shall survive the termination or expiration of this Agreement.

- 9.4 CSAC Right to Audit. CSAC, or another California state entity on CSAC's behalf shall have the ability to audit ECMC's information security and privacy procedures and processes, solely as they relate to ECMC's provision of services to CSAC, including but not limited to system security, employee procedures and procedures for oral and written communications with Cal Grant recipients.
- 9.5 Disaster Recovery and Business Continuity. ECMC represents that it has in place, and will have in place throughout the term of the Agreement, appropriate disaster recovery and business continuity arrangements to protect all data and systems and to provide for the prompt resumption of business operations in case of a disaster.

X. Warranties and Indemnification

- 10.1 EdFund Warranties. EdFund represents and warrants to ECMC (i) that it has and shall have full power and authority to enter into and perform under this Agreement; (ii) ~~that the services shall be performed in a competent, professional, non-negligent manner by qualified personnel;~~ (iii) that the hardware and software systems shall operate and be usable by ECMC during the term of this Agreement, however EdFund shall not be liable for any downtime of systems resulting from the activities of ECMC employees; ~~(viii)~~ that no other person or entity has any rights that would prevent ECMC's full use and enjoyment of the services in accordance with the terms and conditions of this Agreement; and (iv) that the provision of services as set forth in this Agreement does not and shall not violate any patent, copyright or create any liability to any third party.
- 10.2 CSAC Warranties. CSAC represents and warrants to ECMC (i) that it has and shall have full power and authority to enter into and perform under this Agreement; (ii) that no other person or entity has any rights that would prevent ECMC's full use and enjoyment of the license rights granted to ECMC under the terms of this Agreement; (iii) that the granting of the license rights to ECMC does not and shall not violate any patent, copyright or other right of any third party or create any liability to any third party; and (iv) it has authorized EdFund to perform all necessary actions and obligations under this Agreement.

- 10.3 ECMC Warranties. ECMC represents and warrants that it has and shall have full power and authority to enter into and perform under this Agreement; (ii) represents and warrants to CSAC that the services shall be performed in a competent, professional, non-negligent manner by qualified personnel; and (iii) that it maintains all applicable insurance policies including but not limited to Workers Compensation Insurance.
- 10.4 EdFund Indemnification. If the acts or omissions of the employees, agents or assignees of EdFund under this Agreement are the proximate cause of any claim or action brought against ECMC and for any damages, loss, claims or expenses arising out of EdFund's failure to comply with any provision of this Agreement, EdFund will indemnify and hold ECMC harmless from all damages, loss, liability, including reasonable attorneys fees. However, in no event shall EdFund, its affiliates or any of its directors, officers, employees, or agents be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, regardless of whether the damages were foreseeable or whether EdFund was advised of the possibility of the damages. EdFund's cumulative liability for all losses and liability, including paragraph 4.3, above shall not exceed the amount earned (or to be earned) by EdFund as fees under this Agreement. EdFund will assume full responsibility for defense and all costs of said action and the payment of any resulting judgment or settlement. EdFund shall promptly notify ECMC of all claims or counterclaims naming ECMC as a party and shall forward copies of all relevant documents to ECMC in a timely manner. EdFund shall consult with ECMC regarding the disposition of each such claim or action. EdFund shall reasonably cooperate with ECMC's counsel and or insurance carrier regarding any such claims or actions and the proposed disposition of said claims. This section 10.4 shall survive the termination of this Agreement.
- 10.5 ECMC Indemnification. If the acts or omissions of the employees, agents or assignees of ECMC are the proximate cause of any claim or action brought against CSAC or EdFund and for any damages, loss, claims or expenses arising out of ECMC's failure to comply with any provision of this Agreement, ECMC will indemnify and hold CSAC and EdFund harmless from all damages, loss liability, including reasonable attorneys fees. This shall include, but is not limited to, any actions that may be brought against CSAC or EdFund resulting from any contract assignment to ECMC as part of the transition process. However, in no event shall ECMC, its affiliates or any of its directors, officers, employees, or agents be liable under any theory

of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, regardless of whether the damages were foreseeable or whether ECMC was advised of the possibility of the damages. ECMC will assume full responsibility for defense and all costs of such action and the payment of any resulting settlement or judgment. ECMC's cumulative liability for all losses and liability, including paragraph 4.3, to CSAC and EdFund shall not exceed the amount paid by ECMC pursuant to Article III of this Agreement. ECMC shall promptly notify CSAC or EdFund of all claims or counterclaims naming CSAC or EdFund as a party and shall forward copies of all relevant documents to CSAC or EdFund in a timely manner. ECMC shall consult with CSAC or EdFund regarding the disposition of each such claim or action. ECMC shall reasonably cooperate with CSAC's or EdFund's counsel and/or insurance carrier regarding any such claim or action and the proposed disposition of said claim. This section 10.5 shall survive the termination of this Agreement.

XI. Term and Termination Provisions

- 11.1 Term. This Agreement shall commence on ~~November–October 1, 2010–2011~~ and shall continue through ~~September–30 December 31, 2011–2012~~ unless modified or terminated by the Parties. It is expressly understood and acknowledged by the Parties that the level of services to be provided by EdFund shall be reduced and modified during the term of this Agreement as functions are transitioned to ECMC.
- 11.2 Secretary's Right to Terminate. Notwithstanding any provisions of this Agreement to the contrary, the Secretary for the U.S. Department of Education may, pursuant to the provisions of 20 U.S.C. § 1072, terminate this Agreement upon thirty (30) days advance written notice of termination to CSAC, EdFund and ECMC if the Secretary determines that this Agreement includes an impermissible transfer or use of reserve funds or assets, or is otherwise inconsistent with the terms or purposes of 20 U.S.C. § 1072. The date specified by the Secretary shall be the termination effective date.
- 11.3 Termination with Cause by ECMC. ECMC reserves the right to immediately terminate this Agreement upon written notice specifying the termination effective date if ECMC has reason to believe EdFund has ceased to perform the services contemplated herein, or has materially breached any provision of the Agreement. EdFund shall return all ECMC files, reports, documents and other

materials to ECMC within thirty (30) days of receiving such notice to effectuate an orderly termination process. Termination by ECMC of the relationship with EdFund does not alter, amend or terminate the arrangement between ECMC and CSAC.

- 11.4 Termination by CSAC. CSAC reserves the right to terminate this Agreement without cause subject to thirty (30) days advance written notice to ECMC. CSAC reserves the right to immediately terminate Article VII of this Agreement upon written notice specifying the termination effective date if CSAC has reason to believe ECMC has ceased to perform the services contemplated therein, or has breached any provision of the Agreement. ECMC shall return all files, reports, documents and other materials to CSAC within fifteen (15) days of receiving such notice to effectuate an orderly termination process. Termination by CSAC does not alter, amend or terminate the arrangement between ECMC and EdFund.
- 11.5 Federal Government Oversight. The Parties hereby acknowledge and agree that all transactions and services made pursuant to this agreement are subject to audit and review by the U.S. Department of Education, including but not limited to its Office of Inspector General, as well as the Government Accounting Office at their request.
- 11.6 The Parties agree that, prior to the expiration of this Agreement, they will negotiate in good faith for an extension of this Agreement to provide services to CSAC that will enable it to continue to support the CSAC administered programs.

XII. Miscellaneous Provisions

- 12.1 Entire Agreement. This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the subject matter hereof and cancels and supersedes all previous agreements and amendments between the Parties with respect to such subject matter. Notwithstanding the foregoing, this Agreement does not supersede the Operating Agreement between CSAC and EdFund ~~as referenced in paragraph 1.1~~ or the confidentiality obligations in the NDA or any other information security agreements that have been executed by the parties during this transition. It is understood and agreed that no modifications or additions to the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto.
- 12.2 Access to Information and Audits. EdFund agrees that ECMC or its designee shall, upon written request, have reasonable access to

applicable records as necessary, to monitor and verify compliance with all provisions of this Agreement. EdFund shall provide at no cost to ECMC direct access to all ECMC loans via remote access from ECMC's offices.

- 12.3 Audited Financial Statements and Compliance Audits. During the term of this Agreement, EdFund shall, within one hundred and eighty (180) days after the end of each of its fiscal years, send ECMC a copy of its, audited annual financial statement, including balance sheets, income statements and statements of changes in financial condition and a copy of the EdFund's compliance audit as a Third Party Servicer. The audited financial statements and compliance audit must adequately reflect EdFund's compliance with Third Party Servicer requirements.
- 12.4 Records. ECMC shall receive from EdFund and CSAC all Federal Family Education Loan Program records related to the CSAC-guaranteed portfolio transferred to ECMC and which had been serviced by EdFund, including without limitation copies of all financial records, federal filings, correspondence and individual borrower records. These records shall be maintained by ECMC in accordance with Federal Regulation and ECMC's Record Retention and Document Destruction Policy. EdFund agrees to maintain any EdFund financial and corporate records.
- 12.5 Headings. The headings set forth in this Agreement are used solely for convenience and shall not be deemed to limit the subject matter or be considered in the interpretation hereof.
- 12.6 Notices. Any demand, communication or notice required or permitted hereunder shall be effective if either: (i) hand-delivered to the addressee, or (ii) deposited in the United States mail, registered or certified, return receipt requested and postage prepaid, or delivered to a private express company addressed to the addressee (A) as follows:

in the case of ECMC:

Janice A. Hines
President
Educational Credit Management Corporation
Innovation Place
Building 2
Oakdale, MN 55128

in the case of EdFund:

Enrique Murillo
Chair
EdFund c/o California Student Aid Commission
10834 International Drive
Rancho Cordova, CA 95670

in the case of CSAC:

Diana Fuentes-Michel
Executive Director
California Student Aid Commission
10834 International Drive
Rancho Cordova, CA 95670;

or (B) if the addressee has provided the other in writing with a change of address, at the last address so provided. Any notice, communication or demand made as provided in this paragraph shall be deemed given and received on the earlier of: (i) the date actually received; or (ii) the date of delivery, refusal of delivery, or non-delivery as indicated on the return receipt, if sent by mail or private express as provided above, or (iii) five (5) calendar days after first class mailing to the addressee.

- 12.7 No waiver. No failure or delay on the part of any Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.
- 12.8 Assignment. No Party may assign this Agreement without the express written consent of the other Parties.
- 12.9 Jurisdiction and Governing Law. This Agreement shall be construed in accordance with and be governed by the internal laws of the State of California without reference to conflict of laws principles. All litigation arising out of or relating to this contract shall be brought in a state or federal court of competent jurisdiction in the State of California and each party consents to personal jurisdiction and venue in such courts.
- 12.10 Assignees and Successors. All covenants, agreements, representations and warranties herein contained shall extend to,

inure to the benefit of and be obligatory upon all assignees and successors of the respective Parties hereto and the representations, warranties, covenants and indemnities herein contained shall survive the termination of this Agreement, but shall not be deemed to have been made with respect to any period of time subsequent to the termination of this Agreement.

- 12.11 Inoperative or Unenforceable Provisions. If any immaterial provision of this Agreement shall be held to be inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable as applied in any other situation, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more immaterial phrases, sentences, clauses or paragraphs herein contained shall not affect the remaining portions of this Agreement or any part hereof.
- 12.12 Non-exclusive Remedies. No remedy by the terms of this Agreement conferred upon or reserved to either party hereto is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity (including, without limitation the right to equitable relief by way of injunction), or by statute on or after the date of this Agreement.
- 12.13 No Third-Party Beneficiaries. ECMC, CSAC nor EdFund and each of their respective officers, directors, employees and agents shall not have any duties or responsibilities to, or any fiduciary or third-party relationship with any individual, entity, or authority, except as expressly set forth in this Agreement.
- 12.14 Force Majeure. No Party shall be liable for any delay or failure in performing any obligation under this Agreement where the cause for such failure or delay is beyond their reasonable control. Such acts include, but are not limited to, acts of God, war, terrorism, riot, pandemic illness, third-party labor disputes, third-party strikes or lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies or governmental action.

~~12.15 ECMC Work Space. EdFund and ECMC have entered into a sublease effective November 1, 2010. EdFund shall provide access to the Subleased Space, as defined in the sublease during ECMC's business hours. ECMC shall cooperate with EdFund to provide information that may be necessary to comply with EdFund security requirements such as photo identification, access badges etc.~~

12.4615 Counterparts. This Agreement shall become effective upon execution and delivery by all parties. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

a. Authority. Each Party represents and warrants that it has the requisite authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties have executed this Operating Agreement effective as of ~~November~~ October 1, ~~2010~~ 2011.

Educational Credit Management Corporation

EdFund

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

California Student Aid Commission,

By: _____

Its: _____

Date: _____

Reference #	Item is charged back to CSAC	Details
Mail Room/Warehouse		
1		Print letters, reports, and other program material
2	✓ (postage)	Receive and deliver mail, large parcels and packages for the Commission
3		Courier services for the Commission to the bank and the downtown area
4		Storage of financial aid workbooks, brochures, fact sheets, guides, manuals, posters and videos Shipping to high schools and colleges (including collateral material, inventory and usage)
Other Services		
5		Contract management (including, but not limited to: technology, web conferencing, recycle, confidential shred, building security system, storage and cubicle services)
6		Health and safety support and building security support
7		Use of board room/meeting rooms with audio/visual capability and technical support
8		Records retention and property inventory services
9	(supplies)	Ordering office supplies
Imaging		
10		Access to retrieve documents previously imaged

Reference #	Item is charged back to CSAC	Details
11 A		Estimated 200,000 paper applications and other documents to be imaged annually (such as paper GPA verification forms, the G-8 High School Graduation Certification Form, the Transfer Entitlement Certification Form and numerous Specialized Programs forms)
11 B		Backlog Imaging
12		Maintain and operate a Storage Area Network (SAN), which is architecture that allows remote computer storage devices to be attached to servers. This provides the server storage for the GDS system
13		Offsite tape storage
14	✓	Software purchasing and contracting for imaging software, IVR, Oracle Data Base Management System (DBMS) software, and security software in support of the GDS system
15		Backup database administration for the GDS to augment current Commission support Additional services include Oracle DBA support for upgrading and advanced tuning, and troubleshooting the production GDS databases
16		When requested, provide needed expertise for support, troubleshooting or repair of GDS production networks, appliance, and firewalls – this service should not require more than 50 hours of support in a year
17		Provide a one-time security risk assessment of the Grant Delivery system to include scanning for security vulnerabilities and review of system logs for intrusion attempts
18		Provide Linux system administration and support for GDS servers located at OTS – this includes upgrading, patching, auditing, and ensuring optimal performance and security controls are in place

Reference #	Item is charged back to CSAC	Details
19A		Provide mainframe printing services for the Commission which includes changing and creating new overlays and letter formats for GDS letters – the Commission prints over 100 different GDS letter types (approximately 1.5 million letters a year)
19B		Convert printing the Cal Grant Letters from the mainframe to an ASCII solution. To be completed prior to decommissioning the mainframe after the FAPS conversion.
20		Maintain the various ListServe accounts used by the Commission to distribute information to schools
21		Programming and updating Student Expense and Resources Survey (SEARS) application software
Tier 1 Help Desk/Telephony		
22		Provide Tier 1 Help Desk support for 400 postsecondary institutions, over 1800 high schools, over 300,000 student accounts on WebGrants for Students, and Commission staff – these calls are logged in the HEAT ticketing database and dispatched to appropriate Commission personnel for problem resolution
23		Provide all telephony services for the Commission, including but not limited to telephone installation, configuration, modification and hardware support for over 150 IVR telephone interfaces, telephone number assignments, voicemail, and toll-free line support
Training/Outreach Services		
24		Provide opportunity for Commission staff to attend soft skills training, if any, offered by ECMC to its California staff
25		Assist the Commission with obtaining training for more than 3,000 high school counselors and postsecondary educational institutional financial aid officers on the programs administered by the Commission

Reference #	Item is charged back to CSAC	Details
26		Providing the high school training materials
27		Pay for the costs associated with obtaining conference rooms and audio/visual equipment for training high school counselors and postsecondary educational financial aid officers and/or workshops.
28		Support for Cash For College workshops
29		Provide various collateral publications used to inform students, parents and counselors of state and federal financial aid programs
30		Fund Your Future: publishing, production, storage and distribution of approximately 500,000 free financial aid publications that are used to inform and educate students, parents, schools and other interested parties about Cal Grants and other financial aid programs. This includes an annual Free Application for Federal Student Aid (FAFSA) for Students/FAFSA for Parents video production; duplication and warehousing services; <i>Fund Your Future</i> series workbooks, counselors' guides, and brochures; and photo inventory and graphic designing. The Commission's budget does not include funding to continue these critical materials. The <i>Fund Your Future</i> publications series—a student financial aid workbook (English and Spanish), high school counselor's guide and brochure (English and Spanish) — was produced jointly by the Commission and EdFund.
31		College Cash Box: The College Cash Box contains materials high school counselors need to help students apply for financial aid. Approximately 4,500 College Cash Box kits are printed, assembled and disseminated to all California high schools, colleges, universities, career and technical schools, and community organizations. This box is filled with collateral publications that reach students through school counselors and financial aid administrators throughout the state's diverse population. The materials include information for students pursuing an education through career technical education (vocational schools), as well as through California colleges and universities.
Financial Services		
32		Provide accruals for loan program funds
33		Submit invoices for loan program activity

Reference #	Item is charged back to CSAC	Details
34		Prepare monthly and year-end loan program financial statements
35		View access to Oracle Financials until all books are closed (existing license, no additional work required.)
Audit Services		
36		Contract for independent audit of the annual loan program financial statements
37		Provide information and responses for other audits (such as USED compliance audits, federal single audits of federal programs performed by the Bureau of State Audits)
Research Services		
38		Provide information required by the Commission to complete the Annual Report on EdFund
39		Conduct one major research project as designated by the Commission
Federal Alignment		
40		Provide as-needed services to align Commission administered programs with changes in Federal financial aid processes and procedures (such as changes arising from FAFSA form changes that impact Cal Grant processes)
Contracts		
41		Contracts owned by ECMC but are shared with CSAC
New Work		
42		CaliforniaColleges.edu sponsorship for CSAC
43		Pell Grant Table development
44		Provide check \$1,500 for Arthur Marmaduke High School Counselor Award in Spring 2011.

Reference #	Item is charged back to CSAC	Details
45		EdFund's EDD invoices
46		Development of Financial Aid Questionnaire
47		Downloadable Mobile Financial Aid APP
48		CSAC migration from GroupWise/NDS to Exchange/AD
49		Conduct monthly CSAC and ECMC-CA IT synergy meetings to discuss IT items on the list of CSAC Services and open projects.
52		EdFund Board Professional Expenses
53A		GDS Changes for SB70
53B		APLE Program enhancement
54		Webmaster / CSAC website design services
55		Maintain edfund.org website. Updating of EdFund Board meeting notices.