

**Action Item**

***California Student Aid Commission***

Consideration of an Operating Agreement between the California Student Aid Commission, ECMC and EdFund for January 1, 2013 through June 30, 2013

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To provide a context under which the Commission can consider the proposed Operating Agreement between the Commission, ECMC and EdFund, it is helpful to understand the background for how this arrangement came into existence and what it expected by the parties upon the conclusion of the Operating Agreements in June 30, 2013.

By way of background, on July 20, 2010, the U.S. Department of Education (USDE) informed the Commission that it was exercising its authority under the Higher Education Act of 1965, as amended, to terminate the guaranty agreement between USDE and the Commission no later than October 31, 2010. By terminating the guaranty agreement, the Commission was no longer able to participate as a guaranty agency in the Federal family Education Loan Program. Not only did the Commission's role as a guaranty agency, provide significant revenue to the state's General Fund, but it also formed the entire basis for EdFund's operations. Without a guaranty agreement, EdFund would for all intents and purposes cease to exist as a functioning entity.

Following that notification, the Commission appealed USDE's termination of its guaranty agreement. Officials from USDE travelled to Rancho Cordova to meet with the Commission regarding the termination. Following that meeting and several others, an Agreement was reached regarding the resolution of the appeal and the terms under which the Commission's guaranty agreement would be terminated. The resolution of this appeal included the execution of a one-year Operating Agreement between the Commission, ECMC and EdFund that addressed the following:

- \$100 million for Cal Grant awards for 2010-11 Budget Year;
- Procedure for revenue supporting Cal Grant in future budget years;
- Support for the Cash for College Program and Scholarships;
- Services to support the Commission's administration of the Cal Grant Program, including mailroom services, Information Technology support, guard services and other support that EdFund had provided to the Commission;
- Financial assistance with certain EdFund liabilities, including the lease of the EdFund headquarters buildings, the retiree healthcare plan, the 401(k) plan, insurance and legal services;

- Assets located at EdFund confirmed to the Commission following transition;
- Purchase of additional IT assets for the Commission; and
- Recognition of the fact that a future Operating Agreement would be negotiated by the parties.

Prior to the expiration of the first Operating Agreement on September 30, 2011, the parties spent several months evaluating the services being provided and the services that would be necessary going forward. The parties executed a second Operating Agreement with a term of October 1, 2011 through December 31, 2012. The general terms and conditions of the 15-month Operating Agreement were substantially similar to those contained in the first agreement. Where changes were made, it was generally to reduce or eliminate certain obligations imposed on EdFund, which no longer had employees providing services as part of the Operating Agreement. The parties also agreed that there would only be one more “transitional” operating agreement between the parties.

The item before the Commission today is the proposed third and final Operating Agreement between the Commission, ECMC, and EdFund. It has a term of January 1, 2013 through June 30, 2013 and provides the Commission with the last of the assistance needed for the Commission to be self-supporting going forward. It includes, but is not limited to:

- Mailroom assistance in the current mailroom location until the Commission moves into its new facility and then staffing in the Commission’s on-site mailroom until the Commission receives funding to re-establish mailroom services in Budget Year 2013-2014;
- Funds for IT support, including Grant Delivery System programming support;
- Support for the Cash for College Program and Scholarships;
- Guard services in the current facility until the Commission moves to its new facility in April 2013; and
- Support for the Commission’s Fund Your Future publication and other Commission publications and training activities.

Some of the services provided under the Operating Agreement are phased out over the course of the six-month agreement as the Commission either transitions the services back to the Commission or as the need for them reduces with the Commission’s move to its new facility.

The draft agreement can be found at Tab 6.a. A chart delineating the services to be provided under the proposed transitional Operating Agreement can be found at Tab 6.b.

**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

**Transitional Services Agreement dated January 1, 2013 between Educational Credit Management Corporation (ECMC), The California Student Aid Commission ("CSAC") and EdFund**

This Operating Agreement ("Agreement") entered into this \_\_\_ day of December, 2012 and which shall be effective January 1, 2013, is by and between ECMC, a Minnesota not-for profit corporation with a principal place of business of 1 Imation Place, Oakdale, MN 55128, 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 (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 Transitional Services Agreement to provide for an orderly transition of the services that had been provided by each of the parties during the time period when all data, services and operations related to the FFEL Program are being transitioned to ECMC; and

**Whereas** the parties desire to provide for the transfer of certain EdFund-owned assets to ECMC.

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

I. Goods and 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, 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 EdFund services from January 1, 2013-June 30, 2013. From January 1, 2013 through June 30, 2013, 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.

1.4 The Parties acknowledge that an independent appraisal has been performed on the items in Appendix 1 that are being transferred to ECMC. The parties also acknowledge that some of the items in Appendix 1 that are being transferred to ECMC are items for which an appraisal is not suited. In those cases, the parties have reviewed similar items for sale to reach a value. In all cases, the Parties agree that the value assigned the items in Appendix 1 that are being transferred to ECMC, in exchange for the services ECMC is providing hereunder, is a reasonable fair market value.

## 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, predecessor, 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 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.
- 2.5 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.

- 2.6 Compliance with ECMC general guidelines. EdFund shall be responsible for complying with ECMC policies and procedures. This section 2.7 is in no way intended to supersede EdFund's compliance with sections 1.3, 2.5 or 2.6 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 1.3, 2.5 or 2.6. 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.
- 2.7 EdFund agrees that it will close the EdFund Auxiliary Account and make a final accounting within 90 days after the termination of this Agreement and return the balance of the Fund to ECMC in accordance with the Agreement to Transfer Guarantees effective November 1, 2010.

III. Fees for Services provided by EdFund.

- 3.1 Entire Fee. The services set forth in Appendix 2 shall constitute the full and sole compensation for all services performed by EdFund and goods transferred to ECMC by the Parties 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 All ECMC employees accessing EdFund information systems or data shall comply with all EdFund information security standards, procedures, and policies.
- 5.3 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. Upon

the earlier of the termination of the Agreement by any of the Parties or April 1, 2013, the Parties agree that complete ownership of such assets, as identified in Appendix 1 will be transferred to ECMC. 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.

- 5.4 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.
- 5.5 Cooperation for Transitioned services. The Parties acknowledge that the continued 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 CSAC acknowledges that certain services performed by ECMC for the benefit of CSAC will no longer be performed at or before the termination of this Agreement. CSAC agrees that it will make arrangements to have these services performed at the appropriate time. The parties agree that ECMC is not responsible for any harm that results from the termination of certain services as specified in Appendix 2. CSAC also agrees that it will accept the return of items, or designate them for surplus under the state surplus process, listed on Exhibit 1 that are not being transferred to ECMC upon the termination of this Agreement.
- 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 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. CSAC acknowledges that ECMC has produced and will continue to produce "Opportunity Books", which contain material similar to CSAC's "Fund Your Future" books.

## 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 continued use of the systems and intellectual property ECMC shall provide at no cost to CSAC commencing January 1, 2013 and for the term of this Agreement, services for CSAC, which shall consist of those services outlined on the attached Exhibit 2 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. Unless agreed upon in this Agreement, including any Exhibit thereto, or otherwise agreed to by the parties, 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, offers 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 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 9.3, 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 January 1, 2013 and shall continue through June 30, 2013 unless modified or terminated by the Parties. All services under this Agreement shall be obligated during the term of this Agreement with the exception of the EDD costs.
- 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.

## 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 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.
- 12.4 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.
- 12.5 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:

Ana Beltran, 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.

- 12.6 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.
- 12.7 Assignment. No Party may assign this Agreement without the express written consent of the other Parties.
- 12.8 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.
- 12.9 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.
- 12.10 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.

- 12.11 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.
- 12.12 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.
- 12.13 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.
- 12.14 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 January 1, 2013.

**Educational Credit Management  
Corporation**

**EdFund**

**Tab 6.a**

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

California Student Aid Commission,

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

Its: \_\_\_\_\_

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

2013 Transition Agreement between CSAC and ECMC

Tab 6.b

Ref #	2013 Transition Agreement	Details	Status
6	Will be paid for through March 30, 2013	Health and safety support and building security support Service for security guard 7 am to 10 pm (15 hrs) 5 days/week ECMC is responsible for reimbursement of the guards not for overall security of the facility.	CSAC will create a new contract directly and will no longer use ECMC's contract beginning January 1, 2013.
7	Will be paid for through March 31, 2013	Use of board room/meeting rooms with audio/visual capability and technical support. Will provide space that can accommodate the California Open Meeting Rules. The CSAC Commission will need to cover 1 meeting during this transitional period	
8	Will be paid for through June 30, 2013	Records retention, shred services, and property inventory services · CSAC Iron Mountain bill · Cintas for shredding	By January 1, 2013 CSAC will create a new contract with Iron Mountain and Cintas directly and will no longer use ECMC's contract beginning January 1, 2013.
28	ECMC will pay for this through June 2013	Support for Cash For College workshops	
44	ECMC will pay the Spring 2013 cycle	Provide check \$1,500 for Arthur Marmaduke High School Counselor Award in Spring 2013.	

2013 Transition Agreement between CSAC and ECMC

Tab 6.b

Ref #	2013 Transition Agreement	Details	Status
45	ECMC will reimburse for any costs incurred through June 30, 2013	EdFund's EDD unemployment insurance invoices for 2011/2012	
52	ECMC will reimburse for any costs incurred through June 30, 2013	EdFund Board Professional Expenses	
53A	ECMC will reimburse for Information Technology support through June 30, 2013.	GDS Changes for SB70 APPLE Programmer	
53B		Webmaster / CSAC website design services ORACLE Migration 10g -> 11g	
		System maintenance and support of Listserv, Linux, Visiflow, SAN & telephony issues (previously item 10, 12, 15, 16,18 and 20)  Tier 1 Help desk will be transitioned back to CSAC in November of 2012. This line item is to pay for the labor associated to manning that help desk through June 30, 2013.	
14		Assist the Commission with financial aid training through the production of training videos.	
19	ECMC will pay for this through June 2013	Conduct Research project	
New		Assignment of Western Integrated contracts for Visiflow (2012 renewal totalled \$32, 025)	Contracts will need to be assigned to CSAC on January 1, 2013
		<b>TOTAL</b>	

2013 Transition Agreement between CSAC and ECMC

Tab 6.b

Ref #	Details	Est Hours	Status
100	Print letters, reports, and other program material ·Printing 65 hours per month on average at \$40 per hour - through March 31	390	
	Receive & Deliver Mail, large parcels and packages for the Commission Daily-- through March 31 (Twice before noon and once in the afternoon). 50 hrs/mo at \$40/hr	300	
	Courier Service - Daily through March 31 CSAC to ECMC: 1 per day Downtown 1 daily (CSAC to Controller's Office before 11 am) - 50 hrs/mo at \$40/hr	300	
	Shipping costs (UPS) to high schools and colleges (including collateral material, inventory and usage, FYF)	\$3,500/month (based on actuals 2011-12)	
	External Courier Service (deliveries from CSAC to Bank of America)		CSAC will engage in a courier service contract that ECMC will pay for through June 2013
	Maintenance agreements - mailroom.	Maintenance costs associated with Printers & MailRoom Equipment through June 30, 2013	ECMC will reassign the printer & mailroom maintenance contracts to CSAC beginning July 1, 2013

2013 Transition Agreement between CSAC and ECMC

Tab 6.b

		Xerox (\$24,000/quarter)	
		Pitney Bowes* (\$22,000/quarter)	*Total Contract Amount for Pitney Bowes Equipment Maintenance cannot exceed \$380,000 (5 yr contract ending 2014). The amounts shown are actual costs ECMC pays each quarter. There is a separate contract with Pitney Bowes with a total contract amount that cannot exceed \$317,925 (5 yr contract ending 2015) for presort service. The costs for the presort service are added to the postage charges paid by CSAC monthly to ECMC which are based on actual usage. Contracts need to be reassigned to CSAC.
	Paying for labor through June 30, 2013 even though services will be physically		
101	Storage of financial aid workbooks, brochures, fact sheets, guides, manuals, posters and videos ECMC will house the facility at its warehouse through March 31, 2013. At that time CSAC will move items to their space but ECMC will pay for the labor to manage the space until July 1, 2013.	ECMC will continue providing fulfillment (including FYF) through June 2013. Combination of ECMC Staff and temporary staff.  *Charges will be absorbed by ECMC through an ECMC project Code for Financial Literacy (not CSAC related).	
48	CSAC Services – General · Customer Relationship Manager · Executive Support · Finance Support	500 hours	

2013 Transition Agreement between CSAC and ECMC

Tab 6.b

Ref #	Details	Est Hours	Status
55	Maintain edfund.org website. Updating of EdFund Board notices. Board Updates: 4 meetings/year + 4 amendments = 8 changes	15 hours	
49	Assist with filing IRS Form 990 for FY ending 9/30/2011 and FY ending 9/30/2012.  Prepare, review, and file IRS Form 990 and associated state filings.	40 hours	
50	Support and review two EdFund audits for FY ending 9/30/2011 and FY ending 9/30/2012, prepare financial statement and audit report. EdFund financial statement required to prepare Form 990.  *Includes external costs for auditor fees, to be contracted by CSAC: 2010-2011 Fiscal Year: \$50,000 2011-2012 Fiscal Year: \$30,000	40 hours	*CSAC will take over paying audit fees beginning January 1, 2013
51	Maintain and manage EdFund Auxiliary Account and other EdFund financial activity.	144 hours	
	<b>TOTAL</b>	<b>990</b>	