

**SERVICES AGREEMENT**  
*OneDisburse Program*

“Institution”: \_\_\_\_\_

“Institution Address”: [include mailing address  
contract contact, fax and email]

“Effective Date”: \_\_\_\_\_

This Services Agreement (together with DIR Contract No. DIR-SDD-1728 and all exhibits hereto, this “Agreement”) is entered into as of the Effective Date between Higher One, Inc., a Delaware corporation located at 25 Science Park in New Haven, CT 06511 (“Higher One”) and the Institution.

WHEREAS, the Institution desires that Higher One provide the Services (as described in Exhibit A and defined in Exhibit B hereto) to the Institution; and

WHEREAS, Higher One desires to deliver such Services under the terms set forth in DIR Contract No. DIR-SDD-1728 and Exhibits A and B hereto.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Higher One and the Institution hereby agree as follows:

Higher One and the Institution will implement the Services described in the Exhibits on the following timeline:

**DATE** **Go-Live Date:** For purposes of this Agreement, the “Go-Live Date” shall be the date on which implementation is complete and funds disbursement is fully operational.

The initial term is for a period of one (1) year with annual renewal options exercised by the Licensor's issuance of thirty (30) days advanced written notice and Customer's concurrence prior to the then-effective expiration date.

Exhibit A (Description of Services) and Exhibit B (Terms and Conditions) are incorporated into DIR Contract No. DIR-SDD-1728 and this Agreement by reference.

Number of ATMs: \_\_\_\_\_ Term Card Allotment: \_\_\_\_\_

IN WITNESS WHEREOF, the Institution and Higher One have caused this Agreement to be executed as of the date first above written.

**HIGHER ONE, INC.**

**NAME OF INSTITUTION**

By: \_\_\_\_\_  
Mark T. Volchek  
Chief Financial Officer

By: \_\_\_\_\_  
[SIGNER'S NAME]  
[SIGNER'S TITLE]

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

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

## APPENDIX E TO DIR CONTRACT NO. DIR-SDD-1728

### Exhibit A Description of Services

#### *1. General Description*

Higher One will arrange for each User to have access to a DDA, held by a licensed depository institution (the "Bank") that will allow for deposits and withdrawals from DDA. All DDAs will be insured by the Federal Deposit Insurance Corporation ("FDIC"). Deposit transactions may include those initiated electronically, through mail and by phone. Withdrawal transactions may include those initiated by the User directly through the use of the DDA Card, online or through paper checks.

Higher One will provide each User with a co-branded Institution / Higher One MasterCard® (or other network) debit card ("DDA Card") that will provide access to each User's DDA. The Services to the Institution relating hereto will include the following:

- a. developing the design of the DDA Card;
- b. personalizing the DDA Card with full name, and expiration date;
- c. encoding the DDA Card with an ISO 16-digit card number (generated by Higher One) and, if necessary (as determined by the Institution), the Institution identification number as determined during set-up;
- d. delivering the DDA Card to Users via U.S. Mail or other method agreed upon by Higher One and the Institution;
- e. disbursing of all funds that the Institution delivers to Users, including financial aid credit balances, tuition overpayments and similar ("Student Disbursements"); and
- f. issuing standard reports relating to Student Disbursements.

Higher One shall disburse all Student Disbursements to Users. U.S. Department of Education Title IV regulations ("Title IV Regulations") loan refunds will be made within the timelines dictated by all applicable laws, rules and regulations, including the Higher Education Act under Federal Cash Management Rules. Users will have the option to receive the refunds deposited directly into the DDA or receive an electronic ACH transfer to a third party bank account. If a User does not have a valid refund preference selection and such Institution Disbursement is subject to Title IV Regulations, Higher One will issue a default paper check to such User, within twenty-one (21) days of receipt of the refund data and wire transfer, to the address that Higher One has on file for such User, if such an address exists. To initiate the Institution Disbursement, the Institution will provide to Higher One data indicating recipients of funds. To confirm the disbursement request, the Institution must wire transfer the funds to an account designated by Higher One.

Upon the request of the Institution, Higher One will provide functionality to allow Users to use funds in their DDA for on-campus purchases through the Institution One Card system. In the event of an error or if a User has a negative balance in his or her respective DDA, Higher One is authorized to reverse any transfers to on-campus spending accounts, if the funds are still available in such account.

The Institution may elect to make the DDA Card the official identification card of the Institution at no additional cost during the implementation process. To qualify for this no-cost option, the Institution shall notify Higher One in writing prior to finalizing the design of the Institution's DDA Card.

#### *2. Marketing*

Higher One shall have the limited right and license, for the purpose of fulfilling all of the Services, to use the current and future respective name, trademarks, service marks, copyrights and logos of the Institution. Specifically, the Institution gives permission to Higher One and its check printing vendor, currently Deluxe Financial Services, to use the Institution name and the Institution logos for the purpose of check printing. This permission is granted royalty-free and may be used exclusively by Higher One and its affiliates for accounts associated with the Institution.

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Higher One will develop and distribute information marketing the Services to Users by any one or more of the following methods: email, direct mail, telephone, Institution distributed mail, posters, brochures, press releases, and news advertisements. Higher One and the Institution will jointly approve any marketing materials using Institution marks. Higher One will contact DDA accountholders with information regarding their accounts and related services, as permitted or required by law. The Institution will allow Higher One to include marketing materials in appropriate Institution mailings, and use its best efforts to promote and encourage use of the DDA through on-campus and alternative methods. Additionally, the Institution will provide Higher One a means of contacting all Users electronically to inform them about the Services. To the extent possible, the Institution will inform each User's parents (if applicable) about the Services.

### *3. Customer Service*

Higher One will maintain its standard co-branded Higher One / Institution website that will provide the following functions: DDA information, including transaction information, electronic funds transfer request capability, disbursement status information, other standard customer request capabilities, customer service contact information and other relevant Higher One and the Institution information. For additional customization of website functionality above the standard offering, Higher One will provide a price quote to the Institution prior to commencing customization work. Higher One shall provide industry standard customer service with respect to the Services for every User. Communication channels between the Users and Higher One shall include phone, email, US mail, fax and website. Website availability shall be subject to scheduled and unscheduled downtime, which Higher One shall communicate to the Institution if possible.

### *4. ATMs*

Higher One or one of its affiliates shall purchase or lease the number of ATMs specified on the first page of this Agreement at Higher One's cost and shall be permitted to install such ATMs, and related equipment, on the Institution's premises. The ATM(s) shall be installed, serviced and maintained by Higher One, one of its affiliates or a third party contracted by Higher One or one of its affiliates. The ATM(s) shall use a major ATM network that will facilitate national and international access.

Higher One shall provide a wireless (cellular) communication option for the ATMs being provided to the Institution. Higher One shall cover the cost of the standard wireless service if the approved ATM site passes the Higher One wireless router test. In the event that an approved site does not pass the Higher One wireless test, or if an existing wireless communication signal becomes unreliable at any time after installation, the installation and maintenance of a dedicated analog phone line (a "POTS line") shall be the responsibility of the Institution.

### *5. Rewards and Deals*

Higher One, one of its affiliates or a third party contracted by Higher One, may maintain various rewards and incentive programs, from time to time, that would be available to Users. Higher One shall be responsible for the recruitment and management of participating merchants, deals and other promotions, and the assignment and administration of any User benefits. Higher One shall be responsible for informing Users of any such programs offered and the associated terms and conditions of the respective programs.

### *6. Optional Services (upon mutual agreement)*

Higher One and the Institution may agree that Higher One shall provide the Institution additional services under this Agreement (which are not otherwise included pursuant to the terms of this Agreement) including, but not limited to, the following:

- a. accepting Higher One's OnePay for tuition and fee payments and payment plans;
- b. offering automated deposit for faculty and staff expense reimbursement;
- c. providing Institution electronic bill presentment and web-based bill payment;

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- d. assuming payroll processing, such as direct deposit or Higher One’s OnePay process;
- e. providing the Institution a complete eCommerce solution; and
- f. offering various alumni products and services.

To the extent that Higher One and the Institution agree that Higher One shall provide certain optional services, such additional optional services can only be added by a written amendment, addendum or additional exhibit to DIR Contract No. DIR-SDD-1728 and this Agreement, and additional charges for such optional services may apply per Appendix C of DIR Contract No. DIR-SDD-1728.

*7. Miscellaneous Higher One Obligations*

Pursuant to the terms of this Agreement, Higher One shall be responsible for the following actions:

- a. producing and mailing of the DDA Cards to the Institution or User within five (5) business days of receipt of record for both new and replacement DDA Cards;
- b. monitoring of the DDA including fraudulent use of the DDA Card by persons other than the User;
- c. making available online monthly DDA statements to Users and providing necessary services for DDA transactions to comply with Regulation E (15 U.S.C. 1693 *et seq*); and
- d. providing secure logins to authorized representatives of the Institution that will allow access to standard reports online related to Student Disbursements and other information.

The Institution shall be responsible for the protection and the management of the logins of each of its authorized representatives into Higher One’s systems and shall be liable for any disclosure, theft or abuse of logins.

*8. Charges to the Institution*

The Institution shall pay to Higher One the fees and amounts as indicated in Appendix C of DIR Contract No. DIR-SDD-1728 and below. The Institution acknowledges that the fees and other amounts due to Higher One, as set forth below, do not include taxes, duties or other governmental charges. Taxes will be handled in accordance to Section 4F of DIR Contract No. DIR-SDD-1728.

*8.1 Institution Charges*

(a) Set-up and Implementation Costs: The Institution acknowledges that Higher One commits a significant investment in set-up, marketing and other implementation-related services. With the exception of causes outside the control of the Institution, in the event that the Services are not launched by the “Go-Live Date” set forth on the first page of this Agreement, the Institution agrees to pay Higher One for any and all reasonable and documented implementation expenses.

(b) Fees: The following fees, as set forth in Appendix C of DIR Contract No. DIR-SDD-1728, will be charged to the Institution as incurred:

Student Disbursement Fee- ACH/DDA/Default Title IV Paper Check	\$0.40
Reversal Fee (if refund is reversed back to the Institution)	\$5.00
Inactive Replacement Card Fee *	\$10.00
Active Replacement Card Fee	\$20.00

*\*(Charged to the Institution for additional card orders when a User never authenticated/activated the initial card and requests a Replacement Card)*

Please note that it is permitted and customary for the Institution to collect a card fee from Users to offset the Active Replacement Card Fee.

Higher One shall provide DDA Cards to all Users who are credit-seeking students enrolled at the Institution up to the Term Card Allotment specified on the first page of this Agreement at no charge. For purposes of this Agreement, the term “New Card” shall be defined as each DDA Card produced in excess of the Term Card Allotment provided to the Institution by Higher One. For each New Card produced in excess of the Term Card Allotment, the Institution shall pay Higher One a fee of \$5.00 per card. Each

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User shall receive one initial DDA Card. Each additional DDA Card provided to a User by Higher One in any subsequent order shall be considered a “Replacement Card”.

To the extent that the Institution maintains an on-campus spending account and allows Users to transfer funds from their DDA to this on-campus account, the Institution shall pay a 1% service fee on all such transfers.

To the extent that the Institution processes less than 90% of all Student Disbursements through Higher One’s One Disburse® system in any given semester, Higher One reserves the right to charge the Institution a card maintenance fee of \$1 per month per User.

(c) Additional Charges: The Institution may request the following optional services (which are not otherwise included pursuant to the terms of DIR Contract No. DIR-SDD-1728 and this Agreement) and the cost of such services shall be quoted upon request:

- a. non-standard features on the co-branded website and custom reports;
- b. additional ATM placements;
- c. exception handling for Funds Disbursements;
- d. non-basic marketing support or changes to standard marketing materials;
- e. modifications to card design after approval, or additional card features such as proximity or smart chips (pricing above includes standard embossed mag-stripe cards only);
- f. assistance in de-converting from the Services;
- g. excessive Data Transfer (charged in the event that unnecessary files and/or data are uploaded to Higher One’s system);
- h. campus visits requested by the Institution after the implementation and launch of the Services; and
- i. additional training requested post implementation and launch of the Services.

The aforementioned optional services will be quoted at Higher One’s standard hourly rates at such time. The current standard hourly rate is \$275 per hour for technical and project management time. For large projects, discounts on the standard hourly rates may be available. For the avoidance of doubt, to the extent that Higher One and the Institution agree that Higher One shall provide any of these optional services listed in this subsection (c), such additional optional services can only be added by a written amendment, addendum or additional exhibit to this Agreement, and additional charges for such optional services may apply.

### *8.2 Invoices*

Invoicing will be handled in accordance to Appendix A, Section 7B of DIR Contract No. DIR-SDD-1728.

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### Exhibit B Terms and Conditions

#### **1. DEFINITIONS**

The following definitions apply to the terms set forth below when used in this Agreement:

**1.1** “ACH” shall mean Automated Clearing House

**1.2** “ATM” shall mean a mechanized or electronic device that allows consumers to withdraw cash from a bank account and may provide additional functions.

**1.3** “DDA” shall mean a Demand Deposit Account opened and maintained by a User through Higher One.

**1.4** “ERP” shall mean an Institution System and/or third party vendor system that facilitates the enrollment, billing, grades, record keeping, and payroll of Users.

**1.5** “Government Rules” shall mean all applicable laws, regulations and rules promulgated by a state or the federal government, or any agency or department thereof.

**1.6** “Higher One Materials” shall mean any computer programs (source and object code and executable form), communications protocols, specifications, layouts, flow charts, manuals and instruction books, websites, content, designs, logos, proprietary methods, marketing strategies and operational guidelines, as provided by Higher One to the Institution, or developed and used by Higher One in the course of performing the Services.

**1.7** “Institution Data” shall mean any data or information of the Institution that is provided to Higher One in the performance of its obligations under this Agreement, including data and information with respect to the businesses, operations, facilities, products, consumer markets, assets, finances, and personal information of Users. For the avoidance of doubt, Institution Data may include basic User information including, but not limited to, the User’s full name, physical address, phone number and date of birth. Additional required data will be determined during implementation. Institution Data shall not mean the data generated and used by Higher One to provide the Services to Users.

**1.8** “Institution System” shall mean the equipment, hardware, and all related electronic equipment and any computer programs (source code, object code and executable form), used by the Institution to provide its products and services to Users and used by the Institution in conjunction with the Services.

**1.9** “One Card” shall mean an Institution System and/or third party vendor system that provides a multitude of campus services to Users through their DDA Card.

**1.10** “Operating Rules” shall mean any written operating rules and regulations required by third party providers, including but not limited to VISA, MasterCard®, and Fiserv.

**1.11** “Services” shall mean the services to be provided by Higher One to the Institution as set forth on Exhibit A.

**1.12** “User” shall mean a faculty member, staff member, student, or other person affiliated with the Institution who is eligible to receive a DDA Card.

#### **2. PROVISIONS OF SERVICES**

**2.1 Terms Governing Services.** This Exhibit sets forth the terms and conditions applicable to any of the Services which may be provided by Higher One to the Institution during the Term.

**2.2 Changes or Additions to Scope.** Either party may propose a change to any Exhibit, or any additional services to be provided by Higher One to the Institution under an additional Exhibit; however, no such change or additional services shall become part of this Agreement unless and until accepted and agreed in writing by both parties. Upon such execution, such amended or supplemental Exhibit (and any of the Services) shall become part of this Agreement.

**2.3 Conditions Precedent to Services.** Higher One’s obligations hereunder shall be subject to obtaining regulatory and third party approvals needed to provide the Services.

### 3. INSTITUTION OBLIGATIONS

The Institution understands and agrees that Higher One's performance of its obligations hereunder is dependent upon the Institution's cooperation and timely performance of certain tasks and obligations. These tasks and obligations are set forth below and shall include, but are not limited to:

- a. assigning adequate personnel to assist Higher One in the performance of the Services and providing assistance to and coordinating with third party providers of the Institution System to facilitate the timely implementation and performance of the Services;
- b. providing any technical data and other technical information necessary for access to the Institution System and for the performance of the Services;
- c. facilitating any integration and coordinating with Institution System third party vendors including One Card, ERP and other providers in order to connect the Services with the Institution System;
- d. maintaining and operating all of the features and functionalities of the Institution System, unless otherwise expressly stated in Exhibit A, and protecting all information stored on the Institution System;
- e. providing Higher One space on the Institution's campus to install (at a minimum) the number of ATMs, and related equipment, specified on the first page of this Agreement, and, in the event a wireless cellular connection is insufficient or unavailable, providing and paying for dedicated telecommunication lines and electric outlets for all Higher One ATMs;
- f. installing and maintaining a dedicated POTS phone line and a dedicated power circuit for any ATM that does not pass the Higher One wireless router test;
- g. assisting Higher One in the design of marketing information related to the Services;
- h. providing Higher One the right to have marketing materials related to the Services included within Institution mailings to Users, continuing to remain responsible for any expenses, including postage, relating to the Institution distributed mailings to Users and not entering into any agreement or similar relationship with any other third party provider relating to refund disbursement or to the co-branding of checking accounts and/or debit, store-valued or equivalent cards during the Term;
- i. providing (i) access to and assistance with marketing information related to the Services to be distributed to Users by the Institution and (ii) timely decisions and approvals necessary for the timely delivery of the Services;
- j. generating and distributing of payroll stubs and associated tax-related information to the extent that Higher One is handling payroll disbursements;
- k. issuing and distributing temporary cards, which will not be DDA Cards in the event that the Institution desires to provide Users with a temporary card in the case of loss or theft of a Users DDA Card; and
- l. providing Institution Data to Higher One to perform the Services.

#### **Campus Assistance with Customer Identification Program**

The U.S.A. Patriot Act (the "Patriot Act") was passed in an effort to prevent terrorist funds from flowing freely within the United States banking system. Under the Section 326 of the Patriot Act and certain other banking regulations, banks and other parties that handle or transmit funds must have a Customer Identification Program ("CIP"). The CIP ensures that required identity information is not only verified but is retained properly. Higher One's CIP process and website will handle compliance with the Patriot Act. Although Institution participation with the CIP is optional, many clients of Higher One elect to participate for several reasons. Participation with the CIP enhances the Institution's program convenience for students and ensures that the Institution's staff has real-time access to verification tools and reports available through Higher One. Higher One understands that it is not always possible to assist with the CIP verification for all students (i.e. distance learners). The Institution's participation with the CIP helps promote teamwork and adds value to the program.

There are several areas where a process for CIP may occur at the Institution. Although a CIP process may already be a part of a department at the Institution (e.g., Admissions, Card Office, ID functions), it is common to integrate a process into daily operations at any and all points in which identification is currently being verified. Many Higher One clients choose to integrate the CIP process with its business office, carding functions and orientation sessions. Higher One can share best practices with your campus and help with the CIP process.

In the event that the Institution agrees to participate with the CIP described below, the Institution shall be responsible to verify the accuracy of the information collected, as required by laws and regulations, such as FERPA

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and the Patriot Act, and retain any required records of such verification and Higher One and the Institution hereby agree as follows:

*a. Information to be obtained and verified.*

The Institution agrees to obtain at least the following information for each prospective accountholder that requests assistance in verification of identity: First Name, Last Name, Date of Birth and Physical Address. The Institution shall verify such information by examining an unexpired U.S. or foreign government issued photo identification document that shows the nationality or residence of the individual, such as passport, US drivers license, US state or federal issued ID card, US Military card or US Coast Guard Merchant Mariner card. The Institution shall transmit at least weekly to Higher One, either electronically or on paper, information regarding the documents examined for each customer, including document number, place of issuance, expiration date and issuance date, if applicable. Higher One will store these records that will be Higher One's records for purposes of complying with the Act, in compliance with applicable rules. If a prospective accountholder's identity cannot be verified as described, the Institution shall notify Higher One thereof, so that Higher One can perform alternate verification methods.

*b. Right to Review.*

Higher One shall have the right to supervise and oversee the Institution's procedures for obtaining and verifying the identifying information and to review records kept as described in Section (a) above. Higher One has an assessment program in place, in which it will review the customer identification services being performed on an annual basis, in which it will review a sample of the records created by the Institution. In addition, Higher One reserves the right to perform on-site visits to review the verification process, as appropriate. If the Institution fails to comply with its CIP obligations as set forth herein, Higher One will take steps necessary to verify customers' identities. If Higher One is unable to verify customers' identities, OneAccounts may be refused to those customers' in accordance with Higher One's Customer Identification Program.

*c. Miscellaneous.*

To the extent that the Institution elects to assist with the CIP, because the Institution would be performing customer identification services for Higher One, the Institution acknowledges that it would be a third party service provider to Higher One and could be subject to assessments by agencies and entities other than Higher One related to the customer identification functions as if such functions were performed by Higher One on its own premises.

Yes, the Institution agrees to the terms and conditions above.  (Default if neither box is checked)

The Institution declines to assist with the CIP at this time.

#### 4. COMPLIANCE AND WARRANTIES OF PARTIES

**4.1 Compliance.** Higher One and the Institution shall comply in all material respects with any Government Rules, Operating Rules and Higher One Materials applicable to the Services and/or the performance of their obligations hereunder.

**4.2 Higher One.** Higher One represents and warrants that: (i) its performance of the Services materially complies with all applicable Government Rules; (ii) none of the Higher One Materials contains any defamatory, damaging, obscene or offensive materials, or any materials that knowingly infringe or breach any third party's copyrights, trade secrets or moral rights; and (iii) all storage, maintenance and use of the Institution Data by Higher One will materially be in compliance with all Government Rules.

**4.3 Title IV Program Compliance.** Higher One agrees to the following: (i) to comply with all statutory or regulatory provisions, and special arrangements, agreements, limitations, suspensions, and terminations entered into under Title IV of the Higher Education Act program ("Title IV HEA Programs"); (ii) to refer to the U.S. Department of Education Office of Inspector General for Investigations any information indicating there is reasonable cause to believe either: (a) the Institution might have engaged in fraud or other criminal misconduct in connection with the Institution's administration of any Title IV HEA Program, or (b) an applicant for Title IV HEA Program assistance might have engaged in fraud or other criminal misconduct in connection with his or her application; (iii) to be jointly and severally liable with the Institution for any violation by Higher One of any statutory or regulatory provisions, and special arrangements, agreements, limitations, suspensions, and terminations entered into under the Title IV HEA Programs; (iv) to make available to the Institution all records in Higher One's possession pertaining to the Institution's participation in the program or programs for which the Services are no longer provided, if this Agreement is terminated, or Higher One stops providing the Services, goes out of business, or files a petition under the US Bankruptcy Code; and (v) to submit any required compliance audit to the U.S. Department of Education.

**4.4 Institution.** The Institution represents and warrants to Higher One that: (i) it has obtained in writing any licenses, permits, registrations, waiver or other authorizations from any party necessary for Higher One to access and use the Institution Data and Institution System to perform the Services; (ii) the Institution Data is complete and accurate, to the best of the Institution's knowledge, and the Institution has reasonable and appropriate procedures to insure same; and (iii) the Institution Data and the Institution System do not contain any defamatory, damaging, obscene or offensive materials, or any materials that infringe or breach any third party's copyrights, trade secrets or moral rights.

## 5. CONFIDENTIALITY

**5.1 Confidential Information.** To the extent allowable under the Texas Public Information Act, Higher One and the Institution each acknowledges that it will disclose to the other party confidential and proprietary information that has commercial value to the disclosing party in its business that is not in the public domain. For purposes of this Agreement, "Confidential Information" shall mean (i) all information of a party that is marked "confidential", "proprietary", "internal" or with a similar designation or that from the circumstances a party should reasonably understand to be confidential or proprietary to the other party and (ii) trade secrets, confidential knowledge, know-how, software, technical information, data or other proprietary information or business information regarding business planning and operations of disclosing party.

**5.2 Obligations.** To the extent allowable under the Texas Public Information Act, each party shall only use the Confidential Information of the other party to perform its obligations under this Agreement. Each party will use at least the same degree of care, but not less than reasonable care, and to the extent permitted by Government Rules, to prevent any disclosure to third parties of the Confidential Information of the other party as it employs to avoid unauthorized disclosure, publication or dissemination of its own information of a similar nature; provided, however, that each party may disclose such information to its employees, agents, subcontractors and vendors who have a need to know such information, who have been advised by the disclosing party of the obligation to preserve such information's confidentiality, and who have entered into a written confidentiality agreement containing obligations materially similar to those contained in this Section. The disclosing party shall be responsible for any breach by any of its employees, agents, subcontractors or vendors of any such confidentiality obligations. To the extent allowable under records and retention laws and policies, upon expiration or termination of this Agreement for any reason, each party shall return promptly to the other party all Confidential Information in such party's possession and certify in writing to the other party its compliance with this sentence.

**5.3 Exclusions.** Notwithstanding the foregoing, this Section will not apply to any Confidential Information of a party that the other party can demonstrate as evidenced by written records: (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure not subject to any confidentiality obligation; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it; (v) was independently developed by or for the receiving party without reference to Confidential Information of the furnishing party; or (vi) may be required to be disclosed under Government Rules, or as may be required to comply with legal process, provided, however, that the disclosing party shall first give the other party notice of any such disclosure and shall only disclose so much of the other party's Confidential Information as is necessary to comply with the applicable legal requirement or process. Institution Data shall not be deemed Confidential Information for purposes of this Section but shall be subject to Section 6.

**5.4 Equitable Remedies.** Each party acknowledges that, to the extent that it breaches (or threatens to breach) its obligations under this Section, the other party will be irreparably harmed. Accordingly, to the extent authorized by Texas Law and Constitution and without waiving the sovereign immunity of the State of Texas, if a court of competent jurisdiction should find that a party has breached (or threatened to breach) any such obligations, such party will not oppose the entry of an appropriate order restraining it from any further breaches (or threatened breaches).

## 6. INSTITUTION DATA

**6.1 Higher One.** Higher One agrees to store and use the Institution Data in compliance with all Government Rules, in accordance with any standards or procedures set forth in the Operating Rules, and in accordance with industry standards. Higher One shall share the Institution Data with third parties solely as necessary to provide the Services hereunder or as may be required to be disclosed under Government Rules or to comply with legal processes. All personal User information will be handled per Higher One's privacy policy (as may be revised from

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time to time) and in accordance with the Family Education Right to Privacy Act (Buckley Amendment) and the Gramm-Leach-Bliley Act, as applicable.

**6.2 Institution.** The Institution understands and agrees that, to the extent applicable under the provisions of Government Rules, it may be subject to examination by regulatory entities for the Services provided in connection with this Agreement. In addition, the Institution shall comply with all applicable requirements of Government Rules by taking appropriate measures to ensure the security, confidentiality, availability and integrity of all Institution Data and Confidential Information and to protect against unauthorized access to or use of such information.

### 7. OWNERSHIP

**7.1 Higher One.** Higher One shall be the sole and exclusive owner of the Higher One Materials, banking and Higher One related items on the DDA Card, and all Intellectual Property Rights in and to them and their derivative works and improvements (as each of those terms is defined and applied under Title 17 and Title 35 U.S.C., respectively) by whomever developed or created. No ownership of the Higher One Materials or the Intellectual Property Rights in and to them shall be transferred to the Institution. "Intellectual Property Rights" shall mean any and all proprietary rights or moral rights in any trademarks, copyrights, trade secrets, patents and patent applications, renewals, extensions, continuations, divisions or reissues, in whole or in part, now or hereafter in force, and any foreign counterparts.

**7.2 Institution.** The Institution is and shall be the sole and exclusive owner of the Institution System, Institution related items on the DDA Card, and all Intellectual Property Rights therein.

### 8. INSURANCE

Prior to commencing performance, Higher One shall secure, and maintain in force until termination of this Agreement, insurance coverage as required in Appendix A, Section 9N of DIR Contract No. DIR-SDD-1728.

All User DDA accounts will be insured with the FDIC. If requested by the Institution in writing, the Institution will be named as an additional insured on the Commercial General Liability and Commercial Automobile Liability policies, and the Workers Compensation insurance carrier will waive rights of subrogation against the Institution. Evidence of such coverages will be provided to the Institution upon request.

### 9. INDEMNIFICATION

Indemnification will be handled in accordance to Appendix A, Section 9A of DIR Contract No. DIR-SDD-1728.

### 10. EXCLUSIONS OF WARRANTIES AND LIMITATION OF LIABILITY

EXCEPT FOR REPRESENTATIONS OR WARRANTIES EXPRESSLY MADE IN SECTION 4.2, HIGHER ONE MAKES NO, AND HEREBY DISCLAIMS ALL, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY (INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT) TO THE INSTITUTION, OR TO ANY OTHER PERSON, WITH RESPECT TO THE SERVICES, THE HIGHER ONE MATERIALS, OR ANY OTHER SERVICES OR MATERIALS PROVIDED HEREUNDER. NEITHER HIGHER ONE NOR THE INSTITUTION SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, UNDER ANY THEORY OF LIABILITY (WHETHER LEGAL OR EQUITABLE), AND IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER PARTY UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES RECEIVED BY HIGHER ONE FROM THE INSTITUTION UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

### 11. DELAY – FORCE MAJEURE

Force Majeure will be handled in accordance to Appendix A, Section 10C of DIR Contract No. DIR-SDD-1728.

### 12. TERM; TERMINATION

**12.1 Term.** The initial term of this Agreement shall commence on the Effective Date and shall continue for the period of time set forth on the first page of this Agreement, unless earlier terminated pursuant to the terms of Appendix A, Section 10B of DIR Contract No. DIR-SDD-1728. The parties may renew this Agreement upon written agreement for subsequent terms as set forth on the first page of this Agreement. The initial term and any renewal term shall be referred to collectively as the "Term".

## APPENDIX E TO DIR CONTRACT NO. DIR-SDD-1728

**12.2 Termination for Cause.** Terminations will be handled in accordance to Appendix A, Section 10B of DIR Contract No. DIR-SDD-1728.

**12.3 Survival.** The following Sections of this Exhibit and any payment obligations hereunder shall survive any expiration or termination of this Agreement: 1, 5, 6, 7, 9, 10, 13 and 14.

**12.4 Termination Procedures.** Higher One will assist the Institution to inform Users of the change and the options they may exercise as a result of such change. Users are responsible to decide whether to maintain their respective DDA through Higher One or to actively change their banking relationship. De-conversion charges may apply at Higher One's then current standard hourly rates.

### 13. DISPUTE RESOLUTION, GOVERNING LAW AND VENUE

**13.1 Dispute Resolution.** Dispute resolution will be handled in accordance to Appendix A, Section 10A of DIR Contract No. DIR-SDD-1728.

**13.2 Law.** The laws of United States and the state of Texas govern this Agreement, without regard to its conflicts of laws principles. Each of the parties hereby submits to the jurisdiction of the state courts located in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

### 14. GENERAL

**14.1 Independent Contractor Relationship.** Higher One is acting as an independent contractor under this Agreement and nothing in DIR Contract No. DIR-SDD-1728 or this Agreement shall be deemed or construed to create the relationship of partnership, joint venture or employer-employee between the parties. Neither party has, and shall not hold itself out as having, any authority to enter into any contract or create any obligation or liability on behalf of, in the name of, or binding upon the other party..

**14.2 Notices.** Any notice will be handled in accordance with to Appendix A, Section 11 of DIR Contract No. DIR-SDD-1728.

**14.3 Subcontracting.** Higher One shall have the right to utilize the services of subcontractors in performing the Services, provided that Higher One shall retain responsibility to the Institution for performance of the Services under this Agreement..

**14.4 Amendment or Waiver.** No amendment or modification of DIR Contract No. DIR-SDD-1728 and this Agreement shall be valid unless it is in writing and signed by both parties.

**14.5 Headings and Captions.** The headings and captions of this Agreement are included for convenience only and shall not be considered in construction of the provisions hereof.

**14.6 Severability.** If any provision of this Agreement shall be determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of this Agreement, which shall be construed as if such invalid or unenforceable provision had never been a part of this Agreement but in a manner so as to carry out as nearly as possible the parties' original intent.

**14.7 Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

**14.8 Entire Agreement** DIR Contract No. DIR-SDD-1728 and this Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any letters of intent, memorandums of understanding, confidentiality agreements, and other agreements and communications, oral or written, between the parties regarding such subject matter.

**14.9 Assignment.** Assignments will be handled in accordance to Appendix A, Section 4D of DIR Contract No. DIR-SDD-1728.

**14.10 Books and Records.** Higher One will maintain accurate books and records of all funds received and disbursed in connection with its scope of work, including any and all documentation of any kind, correspondence, and other papers and documents relating to this Agreement. All books and records, relating to the Institution program, are to be prepared and kept in accordance with generally accepted accounting principles consistently applied. Higher One shall ensure adequate control over all books, records, and files, relating to the Institution program. Higher One shall preserve all such books and records for at least four (4) years after the close of the calendar year to which they relate and are subject to audit.