

# DATA PROTECTION AGREEMENT

This Data Protection Agreement (“Agreement”) is entered into as of the date last signed (“Effective Date”) between \_\_\_\_\_, a \_\_\_\_\_ (“Contractor”), and The University of North Carolina at Charlotte, an institution of higher education, for its \_\_\_\_\_ (“University”). [If DPA is in addition to another agreement, add “This Agreement is hereby incorporated into the rights and obligations of the parties set forth in \_\_\_\_\_ dated \_\_\_\_\_.” here] University and Contractor are referred to jointly as the “Parties” or singularly as a “Party.” Contractor and University agree as follows:

- 1. Purpose.** The purpose of this Agreement is to establish the content, use, and protection of Protected Data needed by Contractor to support certain services provided to University by Contractor.
- 2. Protected Data.** For the purposes of this Agreement, “Protected Data” is defined as information that is provided by University to Contractor or collected by Contractor on behalf of University other than information that: (i) is or becomes generally available to the public other than as a result of any disclosure or other action or inaction by Contractor; (ii) is or becomes known or available to Contractor from a third party that is not prohibited from disclosing such Protected Data to Contractor by a contractual, legal or fiduciary obligation; or (iii) is or was independently developed by Contractor without violation of any obligation under any agreement between University and Contractor.
- 3. Term.** The term of this Agreement shall begin as of the Effective Date and shall end upon the later of: the termination of all outstanding service agreements between the Parties or certification by Contractor that all copies of Protected Data have been permanently erased or returned to the University.
- 4. Constraints on Use of Protected Data.** Protected Data supplied by University to Contractor or collected by Contractor on behalf of University is the property of University and shall not be sold or used by Contractor, internally or externally, for any purpose not directly related to the scope of work outlined in a written agreement between the Parties without the written permission of University.
- 5. Protected Data Security.** Contractor shall employ industry best practices, both technically and procedurally, to protect Protected Data from unauthorized physical and electronic access. Methods employed are subject to review and approval by University. Further, Contractor shall ensure that its agents, employees, and subcontractors that create, receive, maintain, or transmit any Protected Data on behalf of Contractor agree to substantially the same restrictions, conditions, and requirements that apply to Contractor with respect to such information. Contractor shall take reasonable steps to ensure that the actions of its agents, employees, and subcontractors do not cause Contractor to breach the terms of this Agreement.
- 6. Compliance with Law.** Contractor shall comply with, and shall not cause University to violate, applicable Federal and North Carolina laws and regulations protecting the privacy of citizens including, but not limited to, the Family Educational Rights and Privacy Act (“FERPA”), the Health Insurance Portability and Accountability Act (“HIPAA”) and the Financial Services Modernization Act (the “Gramm-Leach-Bliley Act”).
- 7. Notification of Security Breaches.** The North Carolina Identity Theft Protection Act of 2005 (N.C. Gen. Stat. § 75-60 et seq., as applied by N.C. Gen. Stat. § 132-1.10(c1)) delineates notification requirements in the event of a breach in the security of personal information. Contractor agrees that in the event of any breach or compromise of the security, confidentiality or integrity of any data where personal information of a University student, prospective student, employee, alumnus or other University-affiliated person or entity was, or is reasonably believed to have been, acquired and/or accessed by an unauthorized person and where such breach is known to Contractor or upon notification of such breach to Contractor, Contractor shall notify University of such breach or compromise within 24 hours, comply with all notification actions and assist University with all notification actions required by University policy and applicable law.
- 8. Destruction of Protected Data.** Upon termination of all outstanding service agreements between the Parties, Contractor shall return to University all Protected Data in a usable format. After all Protected Data has been returned to University, Contractor shall certify in writing within five business days that all copies of Protected Data stored on Contractor servers, backup servers, backup media, or other media including paper copies have been permanently erased. For the purposes of this provision, “permanently erased” means the Protected Data have been completely overwritten and are unrecoverable.
- 9. Indemnification.** Contractor will indemnify, defend and hold the University, its respective officers, directors, employees, agents, representatives,

successors and assigns harmless from and against any and all claims by third parties against University, including but not limited to identity theft, resulting in losses, liabilities, damages, fines, penalties, costs, claims, demands and legal expenses to University arising out of or in connection with the willful, gross negligent or negligent acts of the Contractor or its employees specifically with regard to the wrongful disclosure of University's Protected Data maintained by Contractor subject to the limitations set forth herein.

**10. Family Educational Rights and Privacy Act.** With respect to Education Records which Contractor may receive or have access to in connection with the services provided under an outstanding service agreement between the Parties, Contractor acknowledges that University has a statutory duty to maintain the privacy of such records and that as a contractor to whom the University has outsourced institutional services: (a) Contractor is performing an institutional service for which University would otherwise use its employees; (b) Contractor will be considered a school official with a legitimate educational interest in the Education Records; (c) Contractor is under the direct control of University with respect to Personally Identifiable Information from Education Records; and (d) Contractor will comply with all applicable FERPA requirements governing the use and redisclosure of Personally Identifiable Information from Education Records, including without limitation the requirements of 34 CFR §99.33(a).

“FERPA” means the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and the Family Educational Rights and Privacy Act Regulations (34 CFR Part 99), as amended or otherwise modified from time to time.

“Education Records” shall have the meaning given to that term under FERPA and the FERPA Regulations, as amended or otherwise modified from time to time.

“Personally Identifiable Information” shall have the meaning given to that term under FERPA and the

FERPA Regulations, as amended or otherwise modified from time to time.

**11. No Third-Party Beneficiaries.** This Agreement does not have any third-party beneficiaries. No one other than the Parties may seek to enforce the Agreement or may seek a remedy under the Agreement.

**12. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument.

**13. Amendment.** No amendment, modification, addition, extension, or deletion of the terms and conditions of this Agreement shall be effective against the Parties hereto unless it is reduced to writing which makes express reference to this Agreement and is signed by an authorized representative of each Party.

**14. Notices.** Any notice or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, or by electronic mail, to the intended recipient at the address set forth below. Notice shall be effective upon the date of receipt by the intended recipient.

For the University:

Name:

Title:

Address:

Phone:

Email:

For the Contractor:

Name:

Title:

Address:

Phone:

Email:

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**Contractor:**

**University:**

\_\_\_\_\_

The University of North Carolina at Charlotte

By: \_\_\_\_\_  
(Signature of Authorized Representative)

By:

Name:

Name:

Title:

Title:

Date:

Date: