

IVY TECH COMMUNITY COLLEGE SERVICES CONTRACT

This Contract ("this Contract"), entered into by and between Ivy Tech Community College, (the "College") and [insert Contractor name] (the "Contractor"), with an office at [insert address], is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

DEFINITIONS:

Personal Identifiable Information (PII). For purposes of this Agreement, "Personal Identifiable Information" (PII) is any and all data (regardless of format) that (i) identifies or that can be used to identify, contact or locate a natural person, or (ii) pertains in any way to an identified natural person. Personal Information includes (without limitation) a person's name, date of birth, address, telephone number, fax number, email address, social security number, driver's license number, passport number, or other government-issued identifier, student or employee identification number, payment card information, financial, medical and educational records, and any records of transactions with Ivy Tech.

College Data is any data, records, or information owned by College that Contractor creates, obtains, accesses (via records, systems, or otherwise), receives (from College or on behalf of the College), or uses in the course of its performance of the contract which include, but not be limited to: social security numbers; credit card numbers; any data protected or made confidential or sensitive by the Family Educational Rights and Privacy Act, as set forth in 20 U.S.C. §1232g ("FERPA"), the Health Insurance Portability and Accountability Act of 1996 and the federal regulations adopted to implement that Act (45 CFR Parts 160 & 164 "the HIPAA Privacy Rule"), collectively referred to as "HIPAA", the Gramm-Leach-Bliley Act, Public Law No: 106-102, or any other applicable federal or [State] law or regulation. College Data also include all information, including personally identifiable information, derived from other College records.

Contractor. For the purposes of this Agreement, "Contractor" is a person or business that provides goods or services to Ivy Tech under terms specified in a contract agreement. This includes organizations referred to as "Affiliates" that share a common management interest and/or common use of facilities, equipment, and employees with Ivy Tech.

1. **DUTIES OF CONTRACTOR.** The Contractor shall provide [describe service/project] comprised of the following components: [enter further detail if necessary]. A complete statement of work is included in Attachment C.
2. **CONSIDERATION.** The Contractor will be paid according to the Service and Fee Summary found in Attachment B.
 - a. Describe at a high-level the fee structure, annual costs, component cost breakdown and not to exceed amounts.
 - b. EXAMPLE: The College will pay the Contractor [describe payment terms]. The annual amount may not exceed [contract amount limit].

3. **PAYMENT.** All services provided by the Contractor under this Contract must be performed to the College's reasonable satisfaction, as determined at the discretion of the undersigned College representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. All payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the College.

The College shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of federal, state or local statute, ordinance, rule or regulation. Penalties or interest shall not accrue on delayed payments.

4. **ACCESS TO RECORDS.** The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the College or its authorized designees. Copies shall be furnished at no cost to the College if requested.
5. **ASSIGNMENT; SUCCESSORS.** The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the College's prior written consent.
6. **TERM.** This Contract shall be effective for a period of 12 months. It shall commence on **TBD** and shall remain in effect for an initial term of twelve (12) months.
7. **RENEWAL OPTION.** This contract will not automatically renew, but both parties may agree to renew for an additional twelve-month term on the anniversary of the Contract through the execution of a renewal Amendment. If the College determines to renew this contract, it may only be renewed under the same terms and conditions, subject to the approval of the College. The term of the renewed contract may not be longer than the term of the original contract.
8. **TERMINATION.** This Agreement shall be in effect until terminated by either party giving the other party not less than thirty (30) days advance written notice of termination or as mutually agreed upon by the parties; provided that the College may terminate this Agreement for a material breach of this Agreement, or any part thereof, by Contractor that is not cured within fifteen (15) days of written notice from the College. This Agreement shall terminate as of the date of termination of the Agreement.
9. **CONFIDENTIALITY OF COLLEGE DATA.** The Contractor understands and agrees that College Data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the College.

The parties acknowledge that the services to be performed by Contractor for the College under this

Contract may require or allow access to data, materials, and information containing "Personally Identifiable Information", (PII), maintained by the College in its computer system or other records. If any PII is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

10. **CONSTRAINTS ON USE OF DATA.** College Data supplied by College to Contractor or collected by Contractor on behalf of College's students, prospective students, employees or alumni is the property of College and shall not be shared with third parties without the written permission of College. College Data shall not be sold or used, internally or externally, for any purpose not directly related to the scope of work defined without written permission of College.

In addition to complying with other provisions of the contract agreement requiring the protection of College Data, the Contractor shall agree to further Data Sharing Terms and Conditions as outlined in Attachment A, if requested.

11. **HIPAA COMPLIANCE.** If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

If information pertaining to protected health information is accessed, transferred, stored, or processed by Contractor, Contractor shall protect College Data in accordance with the Health Insurance Portability and Accountability Act (HIPAA).

12. **FERPA COMPLIANCE.** Notwithstanding the above the following language applies to all College Data covered by the Family Educational Rights and Privacy Act:
- a. In the course of providing services during the term of the Agreement, Contractor may have access to student education records that are subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, et seq. and the regulations promulgated there under. Such information is considered confidential and is therefore protected. To the extent that Contractor has access to "education records" under this contract, it is deemed a "school official," as each of these terms are defined under FERPA. Contractor agrees that it shall not use education records for any purpose other than in the performance of this contract. Except as required by law, Contractor shall not disclose or share personally identifiable education records with any third party unless permitted by the terms of the contract or to subcontractors who have agreed to maintain the confidentiality of the education records to the same extent required of Contractor under this contract.
 - b. In the event any person(s) seek to access protected education records, whether in accordance with FERPA or other Federal or relevant State law or regulations, the Contractor will immediately inform College of such request in writing if allowed by law or judicial and/or administrative order. Contractor shall not provide direct access to such data or information or respond to individual

requests. Contractor shall only retrieve such data or information upon receipt of, and in accordance with, written directions by College and shall only provide such data and information to College. It shall be College's sole responsibility to respond to requests for data or information received by Contractor regarding College data or information. Should Contractor receive a court order or lawfully issued subpoena seeking the release of such College Data or information, Contractor shall provide immediate notification to College of its receipt of such court order or lawfully issued subpoena and shall immediately provide College with a copy of such court order or lawfully issued subpoena prior to releasing the requested College Data or information, if allowed by law or judicial and/or administrative order.

c. If Contractor experiences a security breach concerning any education record covered by this Agreement, then Contractor will immediately notify the College, and take immediate steps to limit and mitigate such security breach to the extent possible. The parties agree that any breach of the confidentiality obligation set forth in the contract may, at College's discretion, result in cancellation of further consideration for potential contract award or follow-on work and the eligibility for Contractor to receive any information from College for a period of not less than five (5) years. In addition, subject to the Indemnification limitations (#19). Contractor agrees to indemnify and hold the College harmless for any loss, cost, damage or expense suffered by College, including but not limited to the cost of notification of affected persons, as a direct result of the unauthorized disclosure of education records.

d. Upon termination of Agreement, Contractor shall return all College Data or information received from College, or gathered on behalf of, upon, and in accordance with, direction from College. Contractor shall not retain copies of any personally identified data or information received from College once College has directed Contractor as to how such information shall be returned to College and/or destroyed. Furthermore, Contractor shall ensure that they dispose of any and all data or information received from College in a College-approved manner that maintains the confidentiality of the contents of such records (e.g. shredding paper records, degaussing, and physically destroying any portable electronic devices).

13. **PCI COMPLIANCE.** To ensure all possible steps are taken to secure College Data, all in-store technology and e-commerce processing must be PCI compliant, as required by law. Contractor shall provide annual PCI certification documentation as required by law, and at a minimum, must submit an annual report to College.

14. **EUROPAY, MASTERCARD, AND VISA (EMV) COMPLIANCE.** Contractor shall ensure it is compliant with EMV standards for authorizing credit and debit card transactions.

15. **NOTIFICATION OF SECURITY BREACHES.** As a state institution, Ivy Tech is subject to the requirements of the State of Indiana's Release of Social Security Number Law (IC 4-1-10). Many states, as well as international countries, have notification laws which too must be followed. Contractor agrees that in the event of any breach or compromise of the security, confidentiality or integrity of data where personal information of a College student, prospective student, employee, alumnus or other College-affiliated person or entity was, or is reasonably believed to have been, acquired and/or accessed

by an unauthorized person, Contractor shall notify College immediately of the breach of such data, comply with all notification actions, and/or assist Ivy Tech with all notification actions required by law, and Contractor agrees to bear all associated costs.

16. COMPLIANCE WITH LAWS.

- a. Contractor shall comply with all current and future federal, state, and local laws, rules, regulations, and ordinances, industry specific requirements, and all provisions required thereby to be included herein are hereby incorporated by reference.
- b. Contractor shall be responsible for compliance by all Contractor's employees and subcontractors with this Agreement.
- c. Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the College. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the College.

17. FORCE MAJEURE. In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. The expiration date of the Agreement may be extended, by mutual written consent, for a period of time equal to the time that performance of the Agreement is so excused. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

18. AVAILABILITY OF FUNDS. The College represents that, as of the date of this Agreement, funds sufficient to pay its immediate financial obligations under this Agreement have been allocated and are available. However, the College is a publicly funded entity and its ongoing financial obligations under this Agreement are subject to the allocation of funds by parties not controlled by College. When the College makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled immediately. A determination by the College that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive

19. INDEMNIFICATION. The Contractor agrees to indemnify, defend, and hold harmless the College, its Board of Trustees, agents, officials, and employees from all claims, suits, actions, damages, judgments, including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The legal defense provided by Contractor to the College under this provision must be free of any conflicts of interest, even

if retention of separate legal counsel for the College is necessary. This obligation shall continue after the termination of this Contract.

20. **ENDORSEMENT.** Unless specifically authorized in writing by the Chief Information Officer, Contractor may not use the College's name, its officials or employees or the seal or marks of the College in advertising, publicity or promotion nor express or imply any endorsement by College of Contractor's goods or services.
21. **INDEPENDENT CONTRACTOR STATUS.** The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the College with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.
22. **INFORMATION TECHNOLOGY ENTERPRISE ARCHITECTURE REQUIREMENTS.** If the Contractor provides any information technology related products or services to the College, the Contractor shall comply with all College technical requirements, standards, policies and guidelines. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the College shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by the College's Chief Information Officer in advance. The College may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.
23. **INSURANCE.** The Contractor shall secure and keep in force during the term of this Contract the following insurance coverage, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:
- a. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$1,000,000 combined single limit, comprehensive general liability, with coverage extended to include completed operations with protective liability in the event of subcontracting work. The College is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
 - 1) Automobile liability with minimum liability limits of \$1,000,000 combined single limit. The College is to be named as an additional insured on a primary, non-contributory basis;
 - 2) Umbrella Liability Insurance with \$1,000,000 umbrella coverage for contracts less than \$1,000,000 or \$5,000,000 for contracts that exceed \$1,000,000. The College is to be named as an additional insured on a primary, non-contributory basis;

- 3) Workers' Compensation and Occupational Disease Insurance with statutory limits and Employer's Liability Insurance with minimum limits of \$500,000 per accident and \$1,000,000 in the aggregate on all of contractor's employees on Ivy Tech's property;
- 4) Employees' Bonds covering contractor's employees on Ivy Tech's property; and,
- 5) The Contractor shall provide proof of such insurance coverage by tendering to the undersigned College representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2.

b. The Contractor's insurance coverage must meet the following additional requirements:

- 1) The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
- 2) Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.

c. The College will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the College under this Contract shall not be limited by the insurance required in this Contract.

d. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned College.

e. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the College to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the College before the commencement of this Contract.

24. **NON-DISCRIMINATION.** In connection with its performance under this Agreement, the Contractor agrees not to discriminate against any student, employee or applicant for employment because of age, race, religion, color, sex, sexual orientation, national origin, disability, or veteran status. This provision includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor further agrees to take affirmative action to ensure equal employment opportunities. If present on a campus, Contractor, including all employees and subcontractors, shall agree to abide by, and comply with, all College, federal, state, and local policies, regulations, and laws that pertain to sexual harassment and non-discrimination. Contractor further agrees that employees and subcontractors, while on the College's premises, shall comply with and observe all applicable rules and regulations concerning conduct on the College's premises, which are imposed upon the College's employees and agents.

25. OWNERSHIP OF DOCUMENTS AND MATERIALS. All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered “work for hire” and the Contractor transfers any ownership claim to the College and all such materials will be the property of the College. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the College, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the College and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor’s expense. The Contractor shall provide the College full, immediate, and unrestricted access to the work product during the term of this Contract.

26. PROJECT MANAGEMENT.

a. Reporting.

- 1) Contractor personnel will be responsible for providing written, [weekly/semi-monthly] time utilizations, for each individual, to College or to College’s Project Manager, project staff, as College’s Project Manager may assign.
- 2) Contractor’s Project Manager shall deliver to College, [weekly/semi-monthly] reports of contractor’s progress on the project and meeting the objective/deliverables as stated in the Scope of Work. Each report must contain a description of the current status of the project, the tasks on which time was spent, the estimated progress to be made in the next reporting period, and the problems encountered the proposed solutions to them and their effect, if any, on the project budget/schedule.
- 3) Project Variance Reporting – contractor must provide data to allow College to calculate cost and schedule variance in accordance the College's fiscal guidelines. If College’s analysis shows a negative cost or schedule variance exceeding 20%, a subsequent report must also provide proposed corrective measures to address the issues.

b. Deliverable Acceptance.

- 1) Unless otherwise noted in this Contract or agreed upon in writing by both parties, acceptance testing will be performed on-site, on College’s platform.
- 2) Prior to acceptance testing, Contractor will furnish College with documentation of the deliverable item, the expected performance, and agreed upon acceptance criteria.
- 3) Upon completion of a deliverable or sub-deliverable, and after successful user testing, College will have thirty (30) working days in which to accept or reject it in writing. College and Contractor will accept by signature. If college rejects it, College will specify in writing its

grounds for rejection and Contractor shall use its best efforts to revise any issues for the notes to be acceptable to College within the following ten (10) working days. If College rejects it a second time, College will have the option of repeating the procedure as described in this acceptance statement above, escalating the issue to the Chief Information Officer, or terminating this Contract upon written notice to Contractor.

c. Final Acceptance.

- 1) The successful completion of all deliverables as stated in the Scope of Work in accordance with the deliverable acceptance process AND
- 2) The final delivered product fully implemented in College's live production environment AND
- 3) College has sixty (60) calendar days thereafter in which to accept or reject it in writing. If College rejects it, College shall specify in writing its grounds for rejection and Contractor shall use its best efforts to make the product conform to the requirements of this Contract as soon as possible and at no additional cost to College. Contractor shall continue to use its best efforts to make the product conform to the requirements of this Contract until College accepts the product or terminates this Contract upon written notice to Contractor.

d. Integrated Change Control Process. Contractor and College will utilize an integrated change control process to manage changes during the life of a project.

- 1) A change request must be in writing to document the potential change. The write-up for the proposed change must be submitted to Contractor and College's project managers who will in turn provide it to relevant parties for assessment.
- 2) All change requests will be logged and tracked. College's project manager will record the request in the project repository and will update the repository throughout the process.
- 3) The change will be reviewed and, if acceptable to College, Contractor will submit to College an estimate of the impact to cost, schedule, scope, and quality.
- 4) Contractor will continue performing the services in accordance with the original Contract unless otherwise agreed upon by College or College's project manager. Work shall not commence on any new activities related to the change request until all parties agree in writing.
- 5) Contractor's project manager and College's project manager will adapt project plans to incorporate approved changes.
- 6) Each change request duly authorized in writing by the parties shall be incorporated into and considered part of the Contract.
- 7) During the course of the Contract, if Contractor determines or could reasonably determine any

College actions or directions constitute a requirement to perform additional work, Contractor shall notify College within thirty (30) calendar days that College has requested Contractor to perform additional work in the form of a change request utilizing the process above. Contractor understands that it waives the right to request additional time and reimbursable costs if Contractor fails to notify College within thirty (30) calendar days of determining or reasonably being able to determine that any College actions or directions constitute a requirement to perform additional work under the Contract.

27. **PRODUCT CONFORMITY.** College has twelve (12) months following final acceptance of the product(s) delivered by Contractor pursuant to this Contract to verify that the product(s) conform to the requirements of this Contract and perform according to Contractor system design specifications. Upon recognition of an error, deficiency, or defect, by College, Contractor shall be notified by College citing any specific deficiency (deficiency being defined as Contractor having performed incorrectly with the information provided by College, not Contractor having to modify a previous action due to additional and/or corrected information from College). Contractor, at no additional charge to College, shall provide a correction or provide a mutually acceptable plan for correction within thirty (30) calendar days following the receipt of College's notice to Contractor. If Contractor's correction is inadequate to correct the deficiency, or defect, or the error recurs, College may, at its option, act to correct the problem. Contractor shall be required to reimburse College for any such costs incurred or College may consider this to be cause for breach of contract.
28. **CONTINUITY OF SERVICES.** The Contractor recognizes that the service(s) to be performed under this Contract are vital to the College and must be continued without interruption and that, upon Contract expiration, a successor, either the College or another contractor, may continue them. The Contractor agrees to:
- a. Furnish phase-in training; and
 - b. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
 - c. The Contractor shall, upon the College 's written notice:
 - 1) Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
 - 2) Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the College's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.
 - d. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract.

- e. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

29. **GOVERNING LAW.** This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

30. **CIVIL AND CRIMINAL ACTIONS.** Contractor must provide a list of any pending lawsuits brought against the company or owners of the company, and the details about those lawsuits. If any owner of the firm has been convicted of a crime or if any felony charges are pending, Contractor shall provide detailed information about those convictions or charges

31. **INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION.** Contractor, at its own expense, shall defend and indemnify College against claims that products furnished under this Contract infringe a United States patent or copyright or misappropriate trade secrets protected under United States law. As to any product subject to a claim of infringement or misappropriation, Contractor may obtain the right of continued use of the product for College or replace or modify the product to avoid the claim. If neither alternative is available on commercially reasonable terms then, at the request of Contractor, any applicable Software license and its charges will end, College will stop using the product, and will return the product to Contractor. Upon return of the product, Contractor will give College a credit for the price paid to Contractor, less a reasonable offset for use and obsolescence.

32. **REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to College that neither Contractor, in connection with performing the services in performance of this Contract, nor the completed product delivered by Contractor, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. Contractor further represents and warrants to College that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this Contract or in delivery of the completed product unless Contractor has the authority to license, use or provide those trade secrets or confidential or proprietary information to College. Contractor further represents and warrants to College that neither Contractor nor any other company or individual performing services pursuant to this Contract is under any obligation to assign or give any work done under this Contract to any third party.

33. **PERSONNEL/KEY PERSON(S).** Contractor agrees and understands that College's execution of the Contract is predicated, in part and among other considerations, on the utilization of the specific individuals and personnel qualifications as identified; primary being [name of appropriate personnel, if applicable].

Therefore, Contractor agrees that:

- a. Prior to assignment of personnel, Contractor shall obtain written approval from College for all personnel to be assigned to this project.

- b. The personnel assigned must have the knowledge necessary to complete requirements as defined in the Contract.
- c. Contractor shall warrant that all personnel assigned to perform tasks in response to this Contract will remain assigned for the agreed-upon length of time.
- d. No replacement, reassignment or substitution of any assigned individuals and personnel qualifications shall be made without the prior written approval of College and that such replacement, reassignment or substitution shall be made at no additional cost to College.
- e. Any substitution made pursuant to this paragraph must be of equal or higher skills, knowledge, and abilities than those personnel originally proposed and that College's approval of a substitution is not construed as an acceptance of the substitution's performance potential. College agrees that an approval of a substitution will not be unreasonably withheld.
- f. Contractor shall assign personnel on a full-time basis. In the event that a work assignment does not justify full-time participation, Contractor shall assign personnel on a part-time basis with prior written approval of College. However, if the part-time assignments are specified in the Contract, no written approval from College is necessary except for substitution of Contractor personnel.
- g. Upon request by College, Contractor shall replace any Contractor personnel that College determines, in its sole discretion, to be unable to perform the responsibilities of the Contract acceptably, e.g., inappropriate or unprofessional personal conduct, professional inabilities, etc.
- h. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, College shall have the right to terminate this Contract upon thirty (30) days' prior written notice.

34. **LICENSING STANDARDS.** The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The College will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the College immediately and the College, at its option, may immediately terminate this Contract.

35. **MERGER & MODIFICATION.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

36. **NOTICE TO PARTIES.** Whenever any notice, statement or other communication is required under this Contract, it shall be sent by first class mail or via an established courier / delivery service to the following addresses, unless otherwise specifically advised. Until College provides Contractor with written notice of a change, notices to College shall be given to following individuals:

Mr. J.D. Lux
Legal Counsel
Ivy Tech Community College of Indiana
50 West Fall Creek Parkway, N. Drive
Indianapolis, IN 46208

Mr. Matthew Etchison
Chief Information Officer
Ivy Tech Community College of Indiana
50 West Fall Creek Parkway, N. Drive
Indianapolis, IN 46208

Notices to the Contractor shall be sent to:

[Include contact name and/or title, name of vendor & address]

37. **ORDER OF PRECEDENCE; INCORPORATION BY REFERENCE.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order:

- a. this Agreement
- b. Attachments prepared by the College,
- c. RFP#,
- d. Contractor's response to RFP#,
- e. Attachments prepared by the Contractor,

All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

38. **DEBARMENT & SUSPENSION.** The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

39. **DEBARMENT & SUSPENSION OF SUBCONTRACTORS.** The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify College if any subcontractor becomes debarred or suspended, and shall at the College's request, take all steps required by College to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

40. **PUBLIC RECORD.** The Contractor acknowledges that the College will not treat this Contract as containing confidential information and will treat it as a Public Record. Use by the public of the information contained in this Contract shall not be considered an act of the College.

41. **SEVERABILITY.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
42. **SUBSTANTIAL PERFORMANCE.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.
43. **TAXES.** The College is exempt from most state and local taxes and many federal taxes. The College will not be responsible for any taxes levied on the Contractor as a result of this Contract.
44. **TRAVEL.** No expenses for travel will be reimbursed unless specifically permitted under the statement of services or consideration provisions. If travel expenses are permitted under this contract, the expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the College and in accordance with the College Travel Policies and Procedures.
45. **RIGHT TO REMEDIES.** No remedy conferred by any of the specific provisions of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Contract, now or in the future existing at law or in equity or by statute or otherwise.
46. **WAIVER OF RIGHTS.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the College's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the College in accordance with applicable law for all damages to the College caused by the Contractor's negligent performance of any of the services furnished under this Contract.
47. **AUTHORITY TO BIND CONTRACTOR.** The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the College.
48. **NON-COLLUSION AND ACCEPTANCE.** The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof.

In Witness Whereof, Contractor and the College have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

Contractor

Ivy Tech Community College

By: _____

By:

Printed Name:

Printed Name:

Title:

Title:

Date:

Date:

ATTACHMENT A

DATA SHARING AGREEMENT

This Data Sharing Agreement (Agreement) is entered into by and between Ivy Tech Community College of Indiana ("Ivy Tech") and _____ ("Contractor") to establish the content, use, and protection of data needed by Contractor to support the contracted service, whether such data is provided by Ivy Tech or collected by Contractor on behalf of Ivy Tech. This Agreement and Exhibit A is hereby attached to and incorporated within all prior and subsequent Contract Agreements with Contractor executed by the parties, October 22, 2020. The terms of this Data Sharing Agreement supersede any conflicting terms with other agreements.

Definitions:

Personal Identifiable Information (PII). For purposes of this Agreement, "Personal Identifiable Information" (PII) is any and all data (regardless of format) that (i) identifies or that can be used to identify, contact or locate a natural person, or (ii) pertains in any way to an identified natural person. Personal Information includes (without limitation) a person's name, date of birth, address, telephone number, fax number, email address, social security number, driver's license number, passport number, or other government-issued identifier, student or employee identification number, payment card information, financial, medical and educational records, and any records of transactions with Ivy Tech.

College Data is any data, records, or information owned by College that Contractor creates, obtains, accesses (via records, systems, or otherwise), receives (from College or on behalf of the College), or uses in the course of its performance of the contract which include, but not be limited to: social security numbers; credit card numbers; any data protected or made confidential or sensitive by the Family Educational Rights and Privacy Act, as set forth in 20 U.S.C. §1232g ("FERPA"), the Health Insurance Portability and Accountability Act of 1996 and the federal regulations adopted to implement that Act (45 CFR Parts 160 & 164 "the HIPAA Privacy Rule"), collectively referred to as "HIPAA", the Gramm-Leach-Bliley Act, Public Law No: 106-102, or the Release of Social Security Number Indiana Code 4-1-10. College Data also include all information, including personally identifiable information, derived from other College records.

Contractor. For the purposes of this Agreement, "Contractor" is a person or business which provides goods or services to Ivy Tech under terms specified in a contract agreement. This includes organizations referred to as "Affiliates" that share a common management interest and/or common use of facilities, equipment, and employees with Ivy Tech.

- 1. Constraints on Use of Data.** College Data supplied by Ivy Tech to Contractor or collected by Contractor on behalf of Ivy Tech's students, prospective students, employees or alumni is the property of Ivy Tech and shall not be shared with third parties without the written permission of Ivy Tech. College Data shall not be sold or used, internally or externally, for any purpose not directly related to the scope of work defined in the contract agreement without the written permission of Ivy Tech.

In addition to complying with other provisions of the contract agreement requiring the protection of College Data, the Contractor shall:

- a. implement and maintain appropriate security measures for College Data;
- b. not use, and not allow the use of, College Data except as necessary for the performance of services for Ivy Tech;
- c. limit access to College Data to Contractor's employees and subcontractors who have a specific need for such access in order to perform Contractor's services for Ivy Tech (each, a **"Permitted Person"**), provided that Contractor shall not transfer or give access to College Data to any subcontractor without Ivy Tech's prior written approval;
- d. not at any time during or after the term of the Agreement disclose College Data to any person, other than Permitted Persons under clause (1.c) and Ivy Tech personnel in connection with performance of the services, except with Ivy Tech's prior written consent (or except as required by law, in which case Contractor shall, unless prohibited by law, notify Ivy Tech prior to such disclosure);
- e. obtain written approval from Ivy Tech prior to implementation by Contractor of any remote (including Internet) access to College Data by anyone (including any Ivy Tech personnel or students) not a Permitted Person;
- f. certify no felony convictions through background checks on Contractor's employees and subcontractors with access to College Data;
- g. cause all College Data to be encrypted when transmitted by Contractor or Permitted Persons via the Internet or any other public network, or wirelessly;
- h. segregate server computers hosting College Data from Ivy Tech on Contractor's internal data network, and require such server segregation by any subcontractor who receives College Data from Contractor, and ensure that any such servers are not directly accessible from the Internet, and ensure all College Data is stored in the United States;
- i. ensure that no PII is stored by Contractor or Permitted Persons in any portable device, for example laptops, PDAs, smartphones or similar devices, or in any portable media, for example DVDs, and ensure that appropriate protections are in place for other College Data stored in such devices or media;
- j. use measures to protect the security of paper records containing College Data that are reasonable in the circumstances, provided that paper records containing PII shall be stored in securely locked facilities;
- k. notify Ivy Tech within forty-eight (48) hours of learning of any event that creates a risk of unauthorized acquisition or use of College Data or of other harm to any person whose data is involved in the event;
- l. either provide to Ivy Tech on request the results of any SSAE 16 SOC 1 (Type I or Type II) or SOC 2 audit of Contractor's services and system (but Contractor is not obliged hereby to conduct such an audit) or permit an agent of Ivy Tech to conduct such an audit, not more often than annually and at Ivy Tech's expense; and either provide to Ivy Tech on request the results of any vulnerability assessment of Contractor's system or permit Ivy Tech or an agent of Ivy Tech to conduct such tests from time to time, at Ivy Tech's expense;
- m. comply expeditiously with such additional protections as Ivy Tech shall reasonably request from time to time; and
- n. at any time at Ivy Tech's request and in any case upon termination of the services, return College Data to Ivy Tech, at no cost, and cause all copies of College Data in any formats or media, whether held by Contractor or by a Permitted Person or other person who received College Data from Contractor, to be deleted or destroyed, provided that in every case College Data shall be disposed of in such a manner that thereafter it cannot practicably be

read or reconstructed from any records of any kind held by Contractor or such Permitted Person or other person. Contractor shall certify in writing within 10 business days that all copies of the College Data, in all forms, has been permanently erased or destroyed.

2. **Compliance with Applicable Laws and Regulations.** Contractor shall comply with all current and future federal, states, local laws, rules, regulations or ordinances, and industry specific requirements. Contractor shall be responsible for compliance by all its Permitted Persons with this Agreement.

Contractor shall comply with all applicable federal laws and regulations protecting the privacy of individuals including the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA). Where applicable, Contractor shall also comply with all provisions of the Financial Services Modernization Act (the "Gramm-Leach-Bliley Act").

With respect to Education Records which Contractor or its Permitted Persons will receive or have access to in connection with Contractor's services, Contractor acknowledges that Ivy Tech has a statutory duty to maintain the privacy of such records and that as a Contractor to whom Ivy Tech has outsourced institutional services:

- a. Contractor is performing an institutional service for which Ivy Tech would otherwise use Ivy Tech employees;
- b. Contractor is under the direct control of Ivy Tech with respect to Data from Education Records; and
- c. Contractor will comply with all applicable FERPA requirements governing the use and redisclosure of PII including without limitation the requirements of 34 CFR 99.33(a).

3. **Public Information.** Any provisions of the Agreement that exclude from confidential treatment information that is publically available to Contractor shall be inapplicable to College Data.

4. **Notification of Security Breaches.** As a state institution, Ivy Tech is subject to the requirements of the State of Indiana's Release of Social Security Number Law (IC 4-1-10). Many states, as well as international countries, have notification laws which too must be followed. Contractor agrees that in the event of any breach or compromise of the security, confidentiality or integrity of data where personal information of an Ivy Tech student, prospective student, employee, alumnus or other College-affiliated person or entity was, or is reasonably believed to have been, acquired and/or accessed by an unauthorized person, Contractor shall notify Ivy Tech of the breach of the security system containing such data within 48 hours, comply with all notification actions, and/or assist Ivy Tech with all notification actions required by applicable law, and bear all associated costs.

5. **Survival.** The provisions of this Agreement shall survive the termination of any other Agreement.

SIGNATURE BLOCKS ON NEXT PAGE

By the signatures of their duly authorized representatives below, intending to be legally bound, agree to all of the provisions of this Data Sharing Agreement.

Contractor

Ivy Tech Community College

By:

By: _____

Printed Name:

Printed Name: Matthew Etchison

Title:

Title: Senior Vice President & CIO

Date:

By:

Printed Name: Thomas Riebe

Title: Chief Technology Officer

Date:

EXHIBIT A
DATA SHARING AGREEMENT

This Exhibit will document the contracted service and the utilization of data.

Ivy Tech Project Owner:

Description of contracted service, data collection process, how data is used, where data is stored, etc.:

Data elements shared with Contractor:

Data Elements returned from Contractor:

Process used to transmit data: