

# **TRINITY UNIVERSITY**

## **CONFIDENTIALITY and NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT is made by and between Trinity University (hereinafter “TRINITY”) and \_\_\_\_\_(hereinafter the “SERVICE PROVIDER”) effective as of \_\_\_\_\_ (Effective Date). This Agreement is applicable to SERVICE PROVIDER’S employees, subcontractors, vendors, agents, and other project participants.

WHEREAS, TRINITY anticipates that the Services of the SERVICE PROVIDER will be necessary and desirable; and

WHEREAS, the SERVICE PROVIDER desires to enter into an agreement with TRINITY to provide Services as described under the Services Contract between Trinity University and the SERVICE PROVIDER.

NOW THEREFORE, it is agreed as follows:

### **I. PROVISIONS CONCERNING CONFIDENTIAL INFORMATION**

For the purposes of this Agreement, the term SERVICE PROVIDER shall include SERVICE PROVIDER’S employees, subcontractors, vendors, agents, or other anticipated project participants. The term SERVICE PROVIDER shall be construed to mean those individuals who have a legitimate need to know the information being disclosed. This Agreement covers Confidential Information, which may include but is not limited to:

#### **1. Confidential Information**

Confidential Information is information that would be reasonably understood as confidential or proprietary or is designated as such in writing and includes, but is not limited to: confidential personnel information; private health information; student academic information; student financial information (including addresses, phone numbers, bank and credit card account numbers, income and credit histories, and Social Security numbers); information pertaining to TRINITY’S operations (such as financial and statistical records, strategic plans, internal reports, memos, contracts, peer review information, communications, etc.); credit card information received in the course of business by TRINITY; information pertaining to third parties who work with or on behalf of TRINITY (such as computer programs, client and vendor proprietary information, source code, proprietary technology, etc.); and all other Confidential Information referenced in this Section I.

#### **2. Covered Data and Information**

Covered Data and Information includes Student Financial Information (defined below) required to be protected under the Gramm Leach Bliley Act (GLBA), as well as any credit card information received in the course of business by the UNIVERSITY, whether or not such credit card information is covered by GLBA; education records (defined below) protected under the Family Educational Rights and Privacy Act (FERPA); and personal data (defined below) protected under EU GDPR. Covered data and information include both paper and electronic records.

#### **3. Student Financial Information**

Student Financial Information is information that TRINITY has obtained from a customer in the process of offering a financial product or service, or such information provided to TRINITY by another financial institution. Offering a financial product or service includes offering student loans to students, receiving income tax information from a student’s parent when offering a financial aid package, and other miscellaneous financial services as defined in 12 C.F.R. § 225.28. Examples of student financial information include addresses, phone numbers, bank and credit card account numbers, income and credit histories and Social Security numbers, in both paper and electronic format.

#### **4. Education Records**

Education Records include records containing any "personally identifiable information" from student education records as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and the implementing regulations in Title 34, Part 99 of the Code of Federal Regulations (“FERPA”).

#### **5. Personal Data**

Defined under the European Union’s General Data Protection Regulation as any information relating to an identified or identifiable natural person (data subject) to include online identifiers and location data as well as reference to genetic factors.

## **6. Exceptions**

The foregoing restrictions shall not apply to information that the SERVICE PROVIDER can demonstrate (1) was generally known prior to the date of disclosure of the same to the SERVICE PROVIDER by TRINITY; (2) was in the SERVICE PROVIDER's possession prior to the date of disclosure of the same to the SERVICE PROVIDER by TRINITY; (3) becomes generally known through no act or omission by the SERVICE PROVIDER; (4) is supplied to the SERVICE PROVIDER, subsequent to the date of disclosure of the same to the SERVICE PROVIDER by TRINITY, by a third party not under an obligation of confidentiality with respect to such information; or (5) is required to be disclosed by law or pursuant to an order of a court or other governmental agency of competent jurisdiction, in which case the SERVICE PROVIDER shall promptly notify TRINITY of such requirement to afford TRINITY an opportunity to prevent or limit such disclosure.

## **II. GENERAL OBLIGATIONS**

As a SERVICE PROVIDER with access to Confidential Information, the SERVICE PROVIDER is required to conduct itself in strict conformance with applicable federal and state laws as well as the European Union's General Data Protection Regulation and TRINITY's policies governing Confidential Information. The SERVICE PROVIDER's principal obligations in this area are explained below. The SERVICE PROVIDER is required to read and adhere to the obligations and duties established below or in the future by TRINITY as they relate to Confidential Information. The violation of any of these duties could result in revocation of access rights, severance of the contract and to legal liability arising from TRINITY or third parties.

The SERVICE PROVIDER hereby agrees and accepts the following obligations/duties as a condition of and in consideration of its access to Confidential Information:

- a. The SERVICE PROVIDER will use Confidential Information only as needed to perform the specific functions assigned to the SERVICE PROVIDER;
- b. The SERVICE PROVIDER will only access Confidential Information for which it has a need-to-know basis based upon its role;
- c. The SERVICE PROVIDER will not in any way divulge, copy, release, sell, loan, review, alter or destroy any Confidential Information except as properly authorized within the scope of the SERVICE PROVIDER's role; and
- d. The SERVICE PROVIDER will not misuse Confidential Information or carelessly handle Confidential Information;
- e. The SERVICE PROVIDER will not solicit, and will not allow its vendors, subcontractors or agents to solicit business of TRINITY's students.

## **III. COMPLIANCE WITH FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)**

In addition to the foregoing obligations, if TRINITY provides SERVICE PROVIDER with any legally confidential information including but not limited to confidential personnel information or "personally identifiable information" from student education records as defined by the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, and the implementing regulations in Title 34, Part 99 of the Code of Federal Regulations ("FERPA"), SERVICE PROVIDER hereby certifies that collection of this information from TRINITY is necessary for the performance of the SERVICE PROVIDER'S duties and responsibilities on behalf of TRINITY under this Agreement. SERVICE PROVIDER further agrees to handle information protected by FERPA in the manner set forth below.

SERVICE PROVIDER acknowledges that certain information about TRINITY's student(s) may be shared in conjunction with the activities performed under this Agreement and that this information is protected by the Family and Educational Rights and Privacy Act of 1974 (20 U.S. C. 1232g). To the extent that SERVICE PROVIDER has access to "education records" under this contract, it is deemed a "school official," as each of these terms are defined under FERPA. SERVICE PROVIDER agrees that it shall not use education records for any purpose other than in the performance of this contract. Except as required by law, SERVICE PROVIDER shall not disclose or share education records with any third party unless permitted by the terms of this Agreement. Nothing contained herein precludes the parties from sharing information with one another so that each can perform its respective responsibilities.

#### **IV. COMPLIANCE WITH GRAMM LEACH BLILEY ACT**

In connection with the activities contemplated by this Agreement, each Party shall comply with all applicable provisions of the GLBA, including, but not limited to, applicable provisions regarding the sharing or disclosure of Nonpublic Personal Information (as defined in the GLBA).

#### **V. COMPLIANCE WITH EUROPEAN UNION GENERAL DATA PROTECTION REGULATIONS**

SERVICE PROVIDER acknowledges that this Agreement may allow SERVICE PROVIDER to process Personal Data. In compliance with the European Union's General Data Protection Regulation, SERVICE PROVIDER agrees to adhere to the confidentiality expectations as outlined in the EU General Data Protection Regulation (GDPR) and require the same of any subcontractors that perform services in concurrence with this Agreement.

#### **VI. COMPLIANCE WITH WORLD WIDE WEB CONSORTIUM'S WEB CONTENT ACCESSIBILITY GUIDELINES (WCAG).**

If applicable to the Services provided, SERVICE PROVIDER warrants that its Work/Services/Website complies with all local, state and Federal laws and standards regarding accessibility and equally effective and substantially equivalent ease of use for persons with disabilities, including but not limited to the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973 and the World Wide Web Consortium's Web Content Accessibility Guidelines ("WCAG") 2.0. SERVICE PROVIDER shall defend, indemnify and hold harmless the TRINITY, and its respective trustees, officers, employees, agents, and volunteers for any fines, penalties, expenses, or awards related to any claims, including requests for accommodations, concerning the Work/Services/Website, including but not limited to ADA compliance.

#### **VII. MISCELLANEOUS**

##### **A. Prohibition on Unauthorized Use or Disclosure of Covered Data and Information**

The SERVICE PROVIDER agrees to hold the Confidential Information in strict confidence. The SERVICE PROVIDER shall not use or disclose Confidential Information received from or on behalf of TRINITY except as permitted or required by the Service Contract or this Agreement, as required by law, or as otherwise authorized in writing by TRINITY.

##### **B. Safeguard Standard**

The SERVICE PROVIDER agrees that it will protect the Confidential Information that it receives from or on behalf of TRINITY according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

As required by TRINITY policy, SERVICE PROVIDER agrees that it will conduct local, state, and national criminal background checks and review of the national sex offender database, in addition to any other background checks required by applicable law and consistent with the duties and responsibilities associated with such individuals' positions, locations of work and other possible factors, prior to allowing an employee to perform services on campus or to have access to TRINITY's Confidential Information, as determined by TRINITY, and will require the same of any subcontractors, agents, or consultants assigned to do work for TRINITY. SERVICE PROVIDER further agrees that all employees, subcontractors, agents, or consultants are obligated to observe covenants of confidentiality. A credit history report is also required for individuals who may be assigned to finance and accounting positions. Any individuals who have criminal or civil convictions may not be assigned to TRINITY without consultation with TRINITY in accordance with local, state, and federal law, including the Equal Employment Opportunity Commission's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions. Trinity reserves the right to not allow assignment to Trinity. Any individuals with civil convictions related to financial wrongdoing including, but not limited to, embezzlement, fraud, money laundering, theft or other acts indicating dishonesty may not be assigned to TRINITY if such assignment would involve access to financial information, private personal information, social security numbers, or other types of confidential or proprietary information as determined by TRINITY. Any individuals who have criminal convictions that suggest that they could pose a threat to the health and safety of children may not be assigned to TRINITY if such assignment would involve access to or interaction with children. For any individuals who will have access to residence halls or other secure areas a criminal background check is required. This group includes, but is not limited to residence hall assistants, supervisors and counselors; Physical Plant and janitorial staff; food services, concessions, and auxiliary services personnel. Any individuals who have a criminal history may not be assigned to Trinity University if such assignment would involve access to residence halls or secure areas. This check must also include a social security trace to ensure identity.

### **C. Breach**

If the SERVICE PROVIDER experiences a security breach concerning any Confidential Information, then the SERVICE PROVIDER will fully comply with its obligations under any applicable law; immediately notify TRINITY; and fully cooperate with TRINITY in carrying out its obligations under any applicable law.

### **D. Return or Destruction of Confidential Information**

Upon termination, cancellation, expiration or other conclusion of the Agreement, the SERVICE PROVIDER shall return to TRINITY or, if return is not feasible, destroy all Confidential Information in whatever form or medium that the SERVICE PROVIDER received from or created on behalf of TRINITY. This provision shall also apply to all Confidential Information that is in the possession of the SERVICE PROVIDER's contractors, consultants or agents, etc. In such case, the SERVICE PROVIDER shall retain no copies of such information, including any compilations derived from and allowing identification of Confidential Information. The SERVICE PROVIDER shall complete such return or destruction as promptly as possible, but not less than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, the SERVICE PROVIDER shall certify in writing to TRINITY that such return or destruction has been completed.

If the SERVICE PROVIDER believes that the return or destruction of Confidential Information is not feasible, the SERVICE PROVIDER shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction is not feasible, the SERVICE PROVIDER shall extend the protections of this Agreement to Confidential Information received from or created on behalf of TRINITY, and limit further uses and disclosures of such Confidential Information for so long as the SERVICE PROVIDER maintains the Confidential Information.

### **E. Subcontractors, Vendors, and Agents**

If SERVICE PROVIDER provides any Confidential Information which was received from, or created for TRINITY to a subcontractor, vendor, agent or other project participants, then SERVICE PROVIDER shall require such subcontractor, vendor, agent, or other project participant to agree to the same restrictions and conditions as are imposed on SERVICE PROVIDER by this Agreement.

### **F. Maintenance of the Security of Electronic Information**

SERVICE PROVIDER shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Information received from, or on behalf of TRINITY.

### **G. Reporting of Unauthorized Disclosures or Misuses of Covered Data and Information**

SERVICE PROVIDER shall report to TRINITY any use or disclosure of Confidential Information not authorized by this Agreement or in writing by TRINITY. SERVICE PROVIDER shall make the report to TRINITY not more than one (1) business day after SERVICE PROVIDER learns of such use or disclosure.

### **H. PCI DSS: COMPLIANCE WITH PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS.**

If SERVICE PROVIDER is approved to process payment card transactions on campus, all transactions must be processed outside of TRINITY's network through SERVICE PROVIDER's own mobile Wi-Fi hotspot. TRINITY ITS must approve of the equipment/device for processing. SERVICE PROVIDER represents and warrants that it is compliant with current Payment Card Industry Data Security Standards ("PCI DSS") and shall remain compliant during the Term of the Agreement, ensuring that the environment for the processing of transactions is done in compliance with current PCI DSS standards. Should SERVICE PROVIDER become PCI DSS non-compliant during the Term, SERVICE PROVIDER shall promptly notify TRINITY of its non-compliance status. SERVICE PROVIDER will provide TRINITY a copy of its PCI DSS Certificate of Compliance annually to:

Trinity University  
One Trinity Place, Box 29  
San Antonio, TX 78212

### **I. Violation**

Failure to abide by the requirements of legally applicable security measures and disclosure and re disclosure restrictions may, in TRINITY'S sole discretion, result in the interruption, suspension and/or termination of the

relationship with SERVICE PROVIDER. Violation of this Agreement constitutes unacceptable use of TRINITY resources, and may violate other TRINITY policies and/or state and federal law. Violations of the Agreement will result in severance of SERVICE PROVIDER contract with TRINITY and may preclude SERVICE PROVIDER from future contracts with TRINITY.

#### **J. Survival**

The SERVICE PROVIDER understands that the SERVICE PROVIDER'S obligations under this Agreement will continue after the SERVICE PROVIDER's relationship with TRINITY ends.

#### **K. Privilege**

The SERVICE PROVIDER's privileges hereunder are subject to periodic review, revision, and, if appropriate, renewal. TRINITY may at any time revoke the SERVICE PROVIDER'S access to Confidential Information. Access to Confidential Information is a privilege granted by TRINITY and is not a right.

#### **L. Ownership Interest**

The SERVICE PROVIDER has no right or ownership interest in any Confidential Information referred to in this Agreement.

#### **M. Governing Law**

This Agreement shall be subject to and governed by the laws of the State of Texas, excluding any conflicts-of-law rule or principle that may refer the construction or interpretation of this Agreement to the laws of another state. Each of the parties hereby consents to the jurisdiction of the state and federal courts in the State of Texas. Venue for its enforcement shall be in Bexar County, Texas.

#### **N. Indemnification and Limitation of Liability**

SERVICE PROVIDER agrees to indemnify, defend, and hold harmless TRINITY, its trustees, officers, agents, employees, guests and contractors from any and all liabilities, claims, demands, expenses or costs, including attorneys' fees, arising out of any breach by the SERVICE PROVIDER of the SERVICE PROVIDER'S obligations or representations and warranties under this Agreement, and the acts or omissions of the SERVICE PROVIDER or any of their suppliers, officers, agents, guests, affiliates, or contractors with respect to providing the Services contemplated herein. Such right to indemnity under this Agreement shall be in addition to, rather than to the exclusion of, the rights of TRINITY at law or in equity. This Section shall survive any termination of this Agreement.

In no event will TRINITY or any of its trustees, officers, agents, employees, guests and contractors be liable to the SERVICE PROVIDER or any other person or entity for payment of any consequential, incidental, punitive or other special damages arising from a failure to perform its obligations under this Agreement, including but not limited to lost profits. SERVICE PROVIDER will not limit its liability to TRINITY.

#### **O. Insurance**

SERVICE PROVIDER shall maintain in force at all times during the Term of this Agreement and shall maintain in force at all times during the Term of this Agreement and required of any subcontractors, the following insurance:

Technology Errors and Omissions, including Cyber Risk:

Minimum \$5 million per occurrence/aggregate for companies under \$250 million in revenue;  
\$10 million per occurrence/aggregate for companies between \$250 million and \$1 billion in revenue;  
\$25 million per occurrence/aggregate for companies over \$1 billion in revenue.

Commercial General Liability ("CGL") insurance including bodily injury, property damage, premises, and contractual liability, with Trinity University endorsed as an Additional Insured, with minimum limits of \$1 million per occurrence;

If SERVICE PROVIDER has employees on campus:

Automobile Liability insurance with minimum occurrence and combined single limits of \$1,000,000 providing coverage for "Any Autos" including owned, leased, non-owned and hired vehicles;

Workers' Compensation insurance as required by law (Statutory Benefits) and Employer's Liability coverage of \$1,000,000 per occurrence.

All insurance policies must be issued by an insurance company acceptable to TRINITY and authorized to do

business in the State of Texas with a financial rating from A.M. Best Company (or a similar rating agency) of A- or higher.

These insurance policies require notice to TRINITY 30 days before termination or restrictive amendment; must contain waiver of subrogation rights as to UNIVERSITY, contain cross-liability and severability of interests coverage, and be primary and non-contributory. SERVICE PROVIDER shall provide TRINITY with Certificates of Insurance for all of the insurance policies required under this section with written endorsement of Trinity University as an Additional Insured where applicable and other evidence of the required coverage as requested at least 5 business days prior to the effective date of this Agreement.

**P. Term**

This Agreement shall take effect upon execution and continue until termination of SERVICE PROVIDER’S Service Contract with TRINITY.

**Q. Termination**

In addition to the rights of the parties established by any underlying Agreement, if TRINITY reasonably determines in good faith that the SERVICE PROVIDER has materially breached any of the SERVICE PROVIDER’s obligations under this Agreement, TRINITY, in its sole discretion, shall have the right to:

- a. Exercise any of its rights to reports, access and inspection under this Agreement; and/or
- b. Require the SERVICE PROVIDER to submit to a plan of monitoring and reporting, as TRINITY may determine necessary to maintain compliance with this Agreement; and/or
- c. Provide the SERVICE PROVIDER with a fifteen (15) day period to cure the breach; and/or
- d. Terminate the Agreement immediately if the SERVICE PROVIDER has breached a material term of this Agreement and cure is not possible.

Before exercising any of these options, TRINITY shall provide written notice to the SERVICE PROVIDER describing the violation and the action it intends to take.

**R. Non-Discrimination**

**The parties to this Agreement will abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of their status as protected veterans or individuals with disabilities, and prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.**

**S. Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. A facsimile or electronic signature of a party shall have full force and effect.

**VIII. ACKNOWLEDGMENT**

This Agreement the attached Statement of Work constitute the entire agreement. In the event of a conflict between this Agreement and the Services Contract or any other Exhibits, Attachments, Schedules, Amendments, etc., the terms of TRINITY’s Confidentiality Agreement shall govern and control. IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

**SERVICE PROVIDER:**

**TRINITY UNIVERSITY**

**Signature:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

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

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