**Data Security Agreement**

This Data Security Agreement (the "**Agreement**") is made as of \_\_\_\_\_\_\_\_ (the "**Effective Date**"), by and between Babson College, a Massachusetts non-profit Corporation with a principal place of business at 231 Forest Street, Babson Park, MA 02457-0310 ("**College**"), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("**Contractor**").

**Recitals**

**WHEREAS,** College wishes to further safeguard College Protected Information from unlawful access and use;

**WHEREAS,** Contractor may receive or have access to College Protected Information in the course of performance of Other Agreements that the Parties have entered into, or may enter into;

**WHEREAS,** the Parties both wish to further refine their data protection measures to conform with new and future regulations designed to address the protection of personal information; and

**WHEREAS,** Prior to, and in consideration of, Contractor's receipt of, or access to, College Protected Information, Contractor is willing to protect College Protected Information as set forth below.

**NOW, THEREFORE**, for good and sufficient consideration, the Parties agree as follows:

**Agreement**

1. **Definitions**. For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below. Other capitalized terms are defined in context.
	1. **Breach of Security**. The term "**Breach of Security**" has the meaning set out in the CMR, and as the same may be amended from time-to-time.
	2. **CMR**. The term "**CMR**" means 201 Code of Massachusetts Regulations 17.00 et seq: "Standards for The Protection of Personal Information of Residents of the Commonwealth", and as the same may be amended from time-to-time.
	3. **College Protected Information**. The term "**College Protected Information**" has the meaning set out in Section 2.1 (Provision of College Protected Information).
	4. **Confidential Information**. The term "**Confidential Information**" means confidential or other proprietary information disclosed by College to Contractor, whether orally, visually or in writing, before or after the Effective Date, and whether or not marked or otherwise designated as confidential or proprietary, including, without limitation, specifications, trade secrets, financial information, business plans, product plans, supplier lists, applicant and prospective applicant lists, admissions data and financial information. All reports, analyses, compilations, data, forecasts, studies and other materials which contain or otherwise reflect or are generated or derived from such information are also included in the definition of Confidential Information. Confidential Information includes information and documents in paper or electronic form which may not be released to third parties under law. Notwithstanding the foregoing, the term Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, Contractor; (ii) is disclosed by Contractor with the prior written approval of College; (iii) is independently developed by Contractor without use of College’s Confidential Information, provided that Contractor substantiates such independent development with contemporaneous documents; or (iv) is intentionally disclosed by College to a third party without restriction on disclosure.
	5. **Effective Date**.The term "**Effective Date**" has the meaning set out in the introduction to the Recitals.
	6. **FERPA**. The term "**FERPA**" means the Family Educational Rights and Privacy Act set forth at 20 U.S.C. § 1232g and the regulations promulgated thereunder at 34 Code of Federal Regulations ("CFR") §99.3, and as the same may be amended from time-to-time.
	7. **Other Agreements**. The term "**Other Agreements**" means any agreement entered into between the Parties besides this Agreement.
	8. **Party** or **Parties**. The term "**Party**" or "**Parties**" means: (i) College, (ii) Contractor; or (iii) College and Contractor, as the context permits.
	9. **Personal Information**. The term "**Personal Information**" has the meaning set out in Massachusetts General Laws c. 93H and the regulations promulgated thereunder in the CMR, and as the same may be amended from time-to-time.
	10. **Personally Identifiable Information**. The term "**Personally Identifiable Information**" means (i) information that could reasonably be used to identify you, including your name, home address, email address, birth date, credit card information, telephone number, or any combination of this information or similar information that could be used to personally identify you, and (ii) any other personally identifiable information from paper and electronic student education records as that term is used in FERPA, and as the same may be amended from time-to-time.
	11. **Protected Information**. The term "**Protected Information**" means, collectively: (i) Confidential Information, (ii) Personal Information; and (iii) Personally Identifiable Information.
	12. **Services**. The term "**Services**" means any goods or services that a Party provides to the other Party pursuant to Other Agreements.
2. **College Protected Information; Provision and Use.**
	1. **Provision of College Protected Information**. Throughout the course of performance of a Party's obligations under Other Agreements, Contractor may receive, or obtain access to, Protected Information from or on the behalf of College, its students and other persons or entities, for the use or benefit of College (collectively, the "**College Protected Information**"). Contractor hereby acknowledges and agrees that it shall only accept receipt of, or access to, College Protected Information as is necessary for Contractor's performance of its duties and responsibilities pursuant to Other Agreements.
	2. **Contractor Use of College Protected Information; Non-Disclosure**. Contractor hereby acknowledges and agrees to hold College Protected Information in strict confidence, and shall not use or disclose College Protected Information except: (i) as is necessary for Contractor to fulfill its obligations to College under applicable Other Agreements, (ii) as required by law; or (iii) as otherwise authorized in writing by College (collectively, the "**Permitted Uses**"). Contractor agrees not to use College Protected Information for any purpose other than the Permitted Uses. Notwithstanding anything to the contrary, in no event shall Contractor use or otherwise disclose College Protected Information in a manner that conflicts with College's interests. Contractor shall be entitled to disclose College Protected Information on a need-to-know basis to its employees and subcontractors provided such employees and subcontractors are bound by non‑disclosure obligations no less protective than those set out in this Agreement. Contractor shall not copy, transcribe or record any College Protected Information without College's prior written consent, or as is absolutely necessary to perform the Services.
	3. **Disclosure of College Protected Information**. In the event Contractor is required to disclose College Protected Information by law either during or after the Term, Contractor shall promptly notify College in order to provide College an opportunity to seek a protective order or other relief. If, College does not elect to seek, or is unable to obtain, a protective order or other relief, Contractor may disclose the required College Protected Information without liability hereunder; provided, however, that Contractor first gives College written notice of the specific College Protected Information to be disclosed as far in advance of its disclosure as is practicable, and shall use reasonable efforts to obtain assurances that the entity receiving College Protected Information uses at least the same degree of care in safeguarding the disclosed College Protected Information as Contractor is obligated to use pursuant to this Agreement.
	4. **Standard of Care**. Contractor hereby represents that it has implemented appropriate measures to protect against the unauthorized release of College Protected Information and agrees that it shall protect all College Protected Information it receives according to commercially acceptable standards, but in no event, less rigorously than it protects its own Protected Information, and not less than reasonable care and diligence.
	5. **Ownership of College Protected Information**. Contractor acknowledge and agrees that, as between the Parties, College Protected Information is the sole and exclusive property of College.
3. **Notification of Breach.** In addition to Contractor's responsibilities under the CMR, Contractor shall immediately upon discovery report to College in writing (i) any Breach of Security involving College Protected Information, or (ii) any use or disclosure of College Protected Information other than the Permitted Uses (each, a "Report"). Contractor shall fully cooperate with College with respect thereto. Each Report shall include, at a minimum: (i) the nature of the unauthorized use or disclosure, (ii) the College Protected Information used or disclosed, (iii) who made the unauthorized use and received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure, (vi) all information as Contractor is otherwise obligated to provide under the CMR; and (vii) any other information, including a written report, as reasonably requested by College.
4. **College Disclaimer of Warranties.** COLLEGE MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING COLLEGE PROTECTED INFORMATION (AND EXPRESSLY DISCLAIMS ANY AND ALL SUCH WARRANTIES), WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
5. **Contractor Indemnification.** Contractor shall indemnify, defend and hold College harmless from and against all claims, actions, suits and proceedings resulting from Contractor's breach of any of its obligations under this Agreement including, but not limited to (i) (a) the cost of notification of affected persons, (b) third party credit monitoring services, (c) establishing and maintaining a call center in the event of a Data Security Breach; and (d) costs of an investigation (including computer forensic work) to assess and/or mitigate the effects of a Data Security Breach, and (ii) College’s costs and reasonable attorneys’ fees which arise as a result of Contractor’s breach of any of its obligations under this Agreement, or other failure to safeguard College Protected Information as provided in this Agreement. Contractor shall indemnify College for all losses, damages, liabilities, judgments, penalties, fines and expenses incurred by College in any such claim, action, suit or proceeding. Any limitations of liability contained in any Other Agreements shall not be applicable to Contractor's obligations pursuant to this Section (Contractor Indemnification).
6. Limitations on Liability; Consequential Damages Waiver. EXCEPT FOR A CLAIM FOR INDEMNIFICATION MADE PURSUANT TO SECTION (Contractor Indemnification), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS OR OTHER ECONOMIC LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
7. **Compliance with Laws.**
	1. **General Compliance**. Contractor acknowledges and agrees to comply at its own expense with all applicable laws, rules and regulations of governmental bodies and agencies that relate to the subject matter of this Agreement. Such laws include, but are not limited to, the following:
		1. **Compliance with the CMR**. Contractor hereby acknowledge and agrees that, before the Effective Date, it shall implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentially, integrity, and availability of all electronically and physically stored (including, but not limited to, all paper copies) maintained or transmitted Personal Information that is in full compliance and otherwise consistent with the provisions of the CMR. Prior to Contractor's receipt of Personal Information, Contractor shall provide to College a written certification that it has a written, comprehensive information security program as required under the CMR, and that Contractor shall ensure that any subcontractors it engages that receives, or is given access to, Personal Information by Contractor is in compliance with the requirements set out in this Section 7.1.1 (Compliance with the CMR).
		2. **Compliance with FERPA**. Contractor hereby acknowledge and agrees to comply with the limitations on the use and re-disclosure of Personally Identifiable Information from education records as set forth in 34 CFR § 99.00 et seq. Contractor further acknowledge and agrees that it shall maintain the confidentiality, and shall not redisclose, Personally Identifiable Information from education records except as authorized by the College in writing.
	2. **Order of Precedence for Compliance with Laws**. The Parties acknowledge and agree that Contractor's obligations pursuant to this Agreement may be more onerous than those in an applicable law, rule or regulation. In the event that a particular law, rule or regulation is more protective of College Protected Information than those obligations set out in this Agreement, Contractor shall comply with such law, rule or regulation (in addition to complying with its obligations under this Agreement). In the event that Contractor's obligations under this Agreement are more protective of College Protected Information than those obligations set out in an applicable law, rule or regulation, than Contractor shall comply with its obligations under this Agreement (in addition to complying with the applicable law, rule or regulation).
8. **Term and Termination.**
	1. **Term**. This Agreement shall come into force and effect on the Effective Date and shall continue until terminated pursuant to Section 8.2 (Termination) (the "**Term**").
	2. **Termination.**
		1. **Termination for Convenience**. College may terminate this Agreement at any time and for any reason upon giving Contractor written notice of such termination.
		2. **Termination for Cause**. In the event that College reasonably determines that Contractor has breached any of its obligation under this Agreement, College may: (i) immediately terminate this Agreement for cause, (ii) provide Contractor with a notice of breach and, thereafter, provide the Contractor a five (5) day period to cure such breach; or (iii) require Contractor to submit to a plan to better monitor and protect College Protected Information, and to notify College of any breach.
		3. **Insolvency**. In the event a Party makes an assignment for the benefit of creditors, or has a petition in bankruptcy filed for or against it that is not dismissed within sixty (60) days, the other Party shall have the right to terminate this Agreement immediately upon providing written notice of such termination.
		4. **Termination Without Prejudice to Other Rights and Remedies**. Termination of this Agreement shall be without prejudice to College's other rights and remedies pursuant to this Agreement.
9. **Effect of Termination.**
	1. **Return of College Protected Information**. Upon termination or expiration of this Agreement for any reason, all written, electronic or other forms of media in which College Protected Information is embodied along with all copies and extracts thereof, shall forthwith be delivered to College, and all memoranda, notes, reports, designs, plans, schedules, lists and other writings prepared by Contractor based on College Protected Information shall either be immediately delivered to College or destroyed, as College requests. Contractor shall promptly certify to College in writing that it has complied with the requirements of this Section 9.1 (Return of College Protected Information). Contractor acknowledges and agrees to comply with its obligations pursuant to this Section 9.1 (Return of College Protected Information) within thirty (30) days of termination or expiration of this Agreement for any reason, or within such other time as the Parties mutually agree upon.
	2. **Existing Obligations**. The termination of this Agreement for any reason shall not relieve either Party of any obligations to the other Party that arose prior to the termination.
	3. **Survival**. The following Sections shall survive any termination or expiration of this Agreement:

Section 2.3 (Disclosure of College Protected Information)

Section 2.5 (Ownership of College Protected Information)

Section (Indemnification)

Section (Limitations on Liability; Consequential Damages Waiver)

Section (Effect of Termination)

Section (General)

1. **General.**
	1. **Independent Contractors**. The Parties to this Agreement are independent contractors, and no agency, partnership, joint venture or employer-employee relationship is intended or created by this Agreement. Neither Party shall have the power to obligate or bind the other Party. Personnel supplied by a Party shall work exclusively for that Party and shall not, for any purpose, be considered employees or agents of the other Party.
	2. **Independence of Agreement**. This Agreement is separate from and independent of all other agreements between the Parties.
	3. **Governing Law; Venue**. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflicts of law principles. The Parties agree that State and Federal Courts in the judicial districts in which College's principal place of business is located shall have jurisdiction over disputes under this Agreement (to the exclusion of all other forums). The Parties hereby consent to personal jurisdiction and venue in such courts.
	4. **Successors and Assigns**. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party shall, without the prior written consent of the other Party (which consent shall not be unreasonably withheld) assign or transfer this Agreement, and any attempt to do so shall be void and of no force and effect, except that a Party hereto may, without the other Party's consent, assign this Agreement to a parent, subsidiary, or purchaser of substantially all the assets or stock, or to a third party with whom such Party is directly or indirectly merged or consolidated. In the case of any permitted assignment set forth above, the assigning Party will provide reasonable advance notice of the assignment to the other Party.
	5. **Force Majeure**.Neither Party shall be liable for any delay in performing its obligations under this Agreement, if such delay is caused by circumstances beyond the Party's reasonable control, including without limitation, any acts of God, war, terrorism, floods, windstorm, labor disputes, changes in laws or regulations, or delay of essential materials or services. The Party not affected by the force majeure shall have the right to terminate this Agreement without penalty if the Party affected by the force majeure event is unable to resume full performance within thirty (30) days of occurrence of the event.
	6. **Severability; Waiver**. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The waiver by either Party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
	7. **Headings**. Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.
	8. **Notice**. In any case where any notice or other communication is required or permitted to be given hereunder, such notice or communication shall be given in writing by personal delivery, registered mail, confirmed facsimile, or nationally recognized courier service, addressed to the respective Party at the addresses listed below (or such other address as subsequently notified in writing to the other Party). All such notices or other communications shall be deemed to have been given and received: (i) upon receipt, if personally delivered or sent by registered mail, (ii) when delivery is confirmed, if sent by courier service; and (iii) on the transmission date for facsimile communications, if such transmission is error-free and such communication is confirmed by a copy sent first class mail.

If to College: 231 Forest Street, Babson Park, MA 02457, attn:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If to Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, attn:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. **Additional Obligations**. The Parties acknowledge and agree that Contractor's obligations under this Agreement are in addition to any other obligations which Contractor has to College as a result of Other Agreements or other instruments.
	2. **Order of Precedence**. The Parties agree that if a conflict arises between this Agreement and any Other Agreement, then the term or provision of this Agreement shall control.
	3. **Counterparts**. This Agreement may be executed in one or more counterparts, delivered electronically, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.
	4. **Entire Agreement**.This Agreement sets forth the entire understanding and agreement of the Parties and supersedes any and all oral or written agreements or understandings between the Parties as to the subject matter of this Agreement. It may be changed only by a writing signed by both Parties. Neither Party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

|  |  |
| --- | --- |
| **Babson College** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| By:  | By:  |
| Name:  | Name:  |
| Title:  | Title:  |