

## Elon University Service Provider Requirements

These Service Provider Requirements are entered into by and between Elon University and Service Provider. Subject to these Service Provider Requirements, Service Provider is a service provider to whom Elon University shall provide access to Elon University Community Members' Nonpublic Personal Information. These Service Provider Requirements are incorporated into any existing agreements between the parties (each, an "Existing Agreement"). Except as modified by these Service Provider Requirements, all terms and conditions of any Existing Agreements shall remain in full force and effect.

The parties agree as follows:

### 1. Definitions. For purposes of these Service Provider Requirements:

**"Elon Information"** means any and all confidential and proprietary information and documents, and Nonpublic Personal Information, in any form (e.g., electronic, paper, or other) concerning any Elon University Community Members that are submitted under this Agreement or which Service Provider becomes aware of during the course of its performance of its obligations under these Service Provider Requirements or any Existing Agreement.

**"Nonpublic Personal Information"** means all information which identifies or could reasonably identify any Elon University Community Members (including, without limitation, social security number, license number, state ID number, address, employment data); (2) all data from student education records supplied by Elon University, as well as any data provided by Elon University's students to the Service Provider; and (3) all "Personal Data" as defined in the GDPR.

**"Elon University Community Members"** means current or former or prospective trustees, officers, faculty, staff, employees, students, volunteers, agents, or representatives of Elon University or its affiliates.

### 2. Confidentiality and Nondisclosure

2.1. Adequate Safeguards. Service Provider shall provide adequate safeguards for the protection of all Elon Information, including Elon University Members' Nonpublic Personal Information, in accordance with all applicable laws, rules and regulations. To the extent applicable to the performance of Service Provider under these Service Provider Requirements, those safeguards shall conform to the requirements of the Family Educational Rights and Privacy Act ("FERPA") and its implementing regulations, the Gramm-Leach-Bliley Act ("GLBA"), the Federal Trade Commission's *Standards for Safeguarding Customer Information* (the "Safeguards Rule") and the Fair and Accurate Credit Transactions Act of 2003 ("FACTA") and regulations issued by the Federal Trade Commission ("FTC"), the federal bank regulatory agencies, the National Credit Union Administration ("NCUA") (the "Red Flag Rules") requiring financial institutions and creditors to develop and implement written identity theft prevention programs, and the European Union's General Data Protection Regulation ("GDPR") requiring institutions collecting information from natural persons in the European Economic Area ("EEA") to meet specific privacy requirements for processing personal data (collectively, the "Privacy Laws"). The confidentiality, security and other requirements set forth in Service Provider Requirements shall comprise the minimum safeguards to be employed by Service Provider.

2.2. GDPR-Specific Requirements. If the GDPR applies to Elon Information exchanged between Elon University and Service Provider, then the GDPR Data Processing Addendum shall apply to the processing of such Elon Information. The terms of the GDPR Data Processing Addendum are incorporated into these Service Provider Requirements if (or when) services involve the processing of GDPR-regulated Elon Information.

2.3. Confidentiality. Service Provider shall hold all Elon Information in the strictest confidence and in accordance with all applicable laws, rules and regulations. Service Provider may disclose the Elon Information, or portions thereof, only to its employees on a need-to-know basis and whose services are required in furtherance of the objectives of the business relationship between the parties, provided that Service Provider requires each of its

employees to comply with the terms of these Service Provider Requirements and any Existing Agreement, prior to the disclosure to such employees. Service Provider shall not disclose the Elon Information to any third party without the prior written consent of Elon University unless

(i) required to perform Service Provider's obligations under these Service Provider Requirements or

(ii) required by law in which event Service Provider shall, as permitted by law, promptly notify Elon University of such request or requirement prior to such disclosure so that Elon University may exercise such rights as it may have under applicable law to prevent to limit such disclosure.

Service Provider shall be responsible for any breach of the provisions of these Service Provider Requirements by any of its employees or subcontractors or other third parties with whom Service Provider shares Elon Information.

**2.4. Permitted Use.** Service Provider shall use Elon Information only in connection with the furtherance of the business relationship between the parties. Service Provider is expressly prohibited from retaining, using, or disclosing Elon Information, in whole or in part, for any purpose other than for the specific purpose of performing the services, including retaining, using, or disclosing the Elon Information, in whole or in part, for a commercial purpose other than providing the services. Service Provider shall not further collect, sell, or otherwise use the Elon Information except as necessary to perform the services. In addition, Service Provider agrees that Elon information shall not be used for the purpose of training, developing, or enhancing any artificial intelligence models, machine learning algorithms, or related technologies. Service Provider shall not mine, analyze, scan, or re-identify any Elon Information for profiling, predictive analytics, or behavioral insights. Commercial marketing to students or affiliates based on Elon Information is strictly prohibited.

**2.5. Merchant Card Transactions.** The terms of the *Elon University – PCI DSS Compliance Addendum* are incorporated into these Service Provider Requirements if (or when) services involve the processing of merchant card transactions. To the extent of any conflict between the terms and conditions of these Service Provider Requirements or any Existing Agreement, the *Elon University – PCI DSS Compliance Addendum* shall control.

### **3. Data Storage and Controls**

**3.1. Security Requirements.** Service Provider shall develop, implement, maintain and use reasonable administrative, technical and physical security measures to protect Elon Information it accesses, and such measures shall be appropriate to the type of information and in accordance with commercially acceptable standards. Service Provider shall protect all Elon Information no less rigorously than it protects its own confidential information, but in any event, not less than reasonable care.

**3.2. Data Breach Response.** Service Provider shall promptly, but in any event within twenty-four (24) hours of discovery, report to Elon University any actual, threatened or suspected unauthorized use, access or disclosure of Elon Information. This includes, without limitation, any breach of security. Service Provider shall cooperate with all Elon University requests in response to such incidents.

**3.3 Return of Elon Information.** Upon the expiration or termination of these Service Provider Requirements or any Existing Agreement respecting use of Elon Information, for any reason, Service Provider shall promptly turn over and return to Elon all Elon Information (in whatever form or media) or upon the written direction of Elon University, destroy securely by enterprise standards all Elon Information. Following termination, Service Provider shall ensure all Elon Information, including that held by subcontractors or downstream vendors, is securely destroyed or returned within thirty (30) days. No party shall retain copies without Elon's written consent.

**3.4. Transfer of Elon Information.** Service Provider may not store, grant access to, transmit or otherwise use Elon Information outside the United States without Elon University's prior written consent.

3.5. Subcontracting. Service Provider may subcontract its obligations under these Service Provider Requirements or any Existing Agreement, provided that Service Provider shall require any and all such subcontractors be bound by contract terms that are at least as constraining at those in these Service Provider Requirements prior to Service Provider providing any Elon Information to such subcontractor. Upon request of Elon University, Service Provider shall provide evidence of its compliance with the obligations of this Section 3.5. Service Provider shall remain liable to Elon University for the acts or omissions of its subcontractors.

#### 4. Service Provider Representations and Warranties

Service Provider represents and warrants as follows:

4.1. In its performance under any Existing Agreements and these Service Provider Requirements, Service Provider shall comply with all applicable laws, rules and regulations and shall ensure its compliance with the obligations of these Service Provider Requirements and, as applicable, the Privacy Laws.

4.2. Disabilities Compliance. Service Provider shall comply with the Americans with Disabilities Act (ADA) if legally required, by ensuring the resources licensed through the Agreement have appropriate accessibility measures in place. If Elon demonstrates to Service Provider's reasonable satisfaction that the resources licensed through the Agreement do not comply with the ADA, Elon has the right to require Service Provider make adaptations in order to comply with federal and state law or Elon may terminate this Agreement.

4.3. Service Provider shall maintain controls to ensure that any subcontractor used by Service Provider will also be able to protect and will protect Elon Information in a way that, at a minimum, meets all requirements of a Service Provider in these Service Provider Requirements.

#### 5. General Terms and Conditions

5.1. Ownership. Elon Information shall be considered property of Elon University. Service Provider shall not obtain any proprietary rights (directly or indirectly) in or to the Elon Information that is property of Elon University.

5.2. Termination. Any violation of any Service Provider Requirements shall constitute a material breach of these Service Provider Requirements and entitles Elon University to immediately terminate any Existing Agreement without liability or penalty to Elon University.

5.3. Injunctive Relief. The parties acknowledge and agree that money damages shall not constitute an adequate remedy for any breach or threatened breach of the confidentiality provisions of these Service Provider Requirements, and the non-breaching party shall be entitled, in addition to any further available remedies, to equitable relief, including an injunction or order of specific performance, without the necessity of posting bond.

5.4. Audits. Elon University may audit Service Provider's compliance with these Service Provider Requirements at no cost to Service Provider. Service Provider shall cooperate with Elon University in any such audits. Elon University will provide Service Provider with a minimum of five (5) business days ("business days" means all calendar dates EXCEPT dates falling on a Saturday, Sunday, and/or federally recognized holiday) notice prior to conducting any such audit. Elon University may request copies of audits and test result information that indicate the degree to which Service Provider and any permitted subcontractors implement appropriate information security measures in connection with these Service Provider Requirements. Elon University may also request access to relevant system logs or audit trails concerning access to Elon Information, particularly in the event of a breach or incident review

As signed on behalf of the parties by their authorized representatives:

Elon University

[Service Provider]\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_