**STUDENT PRIVACY (FERPA) – SOFTWARE OR SERVICES CONTRACTS**

**Option A:** (agents to select when we do not anticipate student records governed by FERPA will be accessible by the vendor during the contract term):

Confidential University Data is defined as any data or information that Contractor creates, obtains, accesses (via records, systems, or otherwise), receives (from University or on behalf of the University), or uses in the course of its performance of the contract which include, but may 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 (“GLB”), Wisconsin state statute 134.98 or any other applicable federal or Wisconsin law or regulation. Functionality and automatically generated content that includes any Confidential University Data must have mechanisms to comply with the FERPA, HIPAA, GLB, Wisconsin state statutes or any other applicable federal or Wisconsin law or regulation, and UW Policies.

**Option B:** (agents to select when student records governed by FERPA may be accessible by the vendor during the contract term):

Standard language re: Contracts involving sharing of FERPA-covered information

NKL 8/12/10

1. In the course of providing services during the term of the contract, Vendor 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 Vendor has access to “education records” under this contract, it is deemed a “school official,” as each of these terms are defined under FERPA. Vendor agrees that it shall not use education records for any purpose other than in the performance of this contract. Except as required by law, Vendor shall not disclose or share 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 Vendor under this contract.
2. 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 Vendor will immediately inform University of such request in writing if allowed by law or judicial and/or administrative order. Vendor shall not provide direct access to such data or information or respond to individual requests. Vendor shall only retrieve such data or information upon receipt of, and in accordance with, written directions by University and shall only provide such data and information to University. It shall be University’s sole responsibility to respond to requests for data or information received by Vendor regarding University data or information. Should Vendor receive a court order or lawfully issued subpoena seeking the release of such data or information, Vendor shall provide immediate notification to University of its receipt of such court order or lawfully issued subpoena and shall immediately provide University with a copy of such court order or lawfully issued subpoena prior to releasing the requested data or information, if allowed by law or judicial and/or administrative order.
3. If Vendor experiences a security breach concerning any education record covered by this contract, then Vendor will immediately notify the University 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 University’s discretion, result in cancellation of further consideration for contract award and the eligibility for Vendor to receive any information from University for a period of not less than five (5) years. In addition, Vendor agrees to indemnify and hold the University harmless for any loss, cost, damage or expense suffered by University, including but not limited to the cost of notification of affected persons, as a direct result of the unauthorized disclosure of education records.
4. Upon termination of contract, Vendor shall return and/or destroy all data or information received from University upon, and in accordance with, direction from University. Vendor shall not retain copies of any data or information received from University once University has directed Vendor as to how such information shall be returned to University and/or destroyed. Furthermore, Vendor shall ensure that they dispose of any and all data or information received from University in a University-approved manner that maintains the confidentiality of the contents of such records (e.g. shredding paper records, erasing and reformatting hard drives, erasing and/or physically destroying any portable electronic devices).