IVY.AI SERVICE AGREEMENT

This Service Agreement (this “Agreement”) dated December 15, 2017 is entered into by and between Ivy.ai, Inc. (a Delaware Corporation), and Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas (“Client”). The “Effective Date” of this Agreement shall be April 6, 2018.

1. ACCESS
   Ivy will make available to Client a web based plugin (“Chatbot”). Ivy will customize Chatbot in accordance with Client’s selections set forth in set forth in Exhibit A. Ivy agrees to use commercially reasonable best efforts to satisfy the custom requirements of Client.

2. RIGHTS
   (a) Ivy Applications. Client hereby agrees that Ivy is the sole and exclusive owner of all right, title and interest in and to the Ivy Applications and any and all improvements, customizations and enhancements thereto. Client hereby further agrees that Client shall not under any circumstances assert any claims that challenge Ivy’s rights in and to the Applications, nor shall it aid nor induce any third party to do the same. Except as expressly permitted herein, Client shall have no right or license to the Applications. Client further agrees that it shall not use, copy, print, display, publish, transmit, sublicense or otherwise transfer, distribute or make available to others, edit, modify, or create any derivative works of, all or any part of the Applications. For the avoidance of doubt, Client has no rights to re-sell or re-distribute the Applications or offer any service that effectively does the same. All trademarks, service marks, trade names and logos of Ivy appearing on or within the Ivy Applications are the sole property of Ivy and may not be used by Client without written permission.

3. SERVICE FEES; PAYMENT
   (a) Service Fees. Client will pay to Ivy the fees set forth in Exhibit B. All amounts paid are nonrefundable except for refunds allowed under Section 5(a) during the Warranty Period (as defined below).

4. TERM AND TERMINATION
   (a) Initial Term; Renewal. The initial term of this Agreement shall commence on the Effective Date and shall continue for an initial period of twelve (12) months and shall renew by written agreement thereafter. (b) Termination; Effect of Termination. This Agreement may be terminated by either party upon a breach by the other party of any material term of the Agreement, which breach is not cured within fourteen (14) calendar days of dispatch of written notice setting forth the nature of the breach. Client acknowledges that upon the termination of this Agreement for any reason or no reason, Client’s rights under Section 1 above shall cease and Ivy reserves the right to suspend the user login IDs and passwords of Client’s administrators or to otherwise deny access to the Applications, and Ivy will be under no obligation to save any data or documents created by Client’s administrators prior to such termination. This Agreement may be terminated without penalty, by the Client without cause by giving sixty (60) days written notice of such termination to the Ivy. In no event shall such termination by Client as provided for under this Section give rise to any liability on the part of Client, but not limited to, claims of Ivy for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing.
Client’s sole obligation hereunder it to pay Ivy for products and/or services ordered and received prior to the date of termination.

5. WARRANTIES
(a) Applicaturons. For a period of thirty (30) days commencing on the Effective Date (the “Warranty Period”), Ivy warrants that the Applications will perform substantially as demonstrated to Client by Ivy. Should the Applications fail to continue to perform substantially as demonstrated following the expiration of the Warranty Period, Client is entitled to a pro-rata refund of any annual service fees paid. (b) Remedies. In the event of a breach of the foregoing warranty, Client must notify Ivy of such breach in writing during the Warranty Period. Ivy’s sole liability and obligation and Client’s exclusive remedy for breach of this warranty will be for Ivy, at its sole discretion and option, to either repair the Applications or to refund to Client the fees paid hereunder as set forth above. Upon the refund of such fees, Ivy shall discontinue Client’s access to the Applications and Client’s rights under Section 1 above shall immediately cease. (c) Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, IVY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND IVY HEREBY DISCLAIMS THE SAME. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IVY MAKES NO REPRESENTATION OR WARRANTY THAT THE IVY APPLICATIONS WILL OPERATE IN AN UNINTERRUPTED OR ERROR FREE MANNER. IVY DOES NOT AND CANNOT CONTROL THE FLOW OF DATA OVER THE INTERNET. ACCORDINGLY, IVY FURTHER DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATING TO ANY DISRUPTION IN CLIENT’S ACCESS TO THE APPLICATIONS DUE TO ANY INTERRUPTION OR PERFORMANCE DEGRADATION OF ACCESS RELATED TO THE INTERNET.

6. LIMITATION OF LIABILITY
TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, IVY SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOST PROFITS OR LOST CLIENT DATA OR BUSINESS INTERRUPTION), WHETHER ARISING FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION OR TRANSMISSION, OR FAILURE OF PERFORMANCE, EVEN IF IVY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL IVY’S AGGREGATE LIABILITY FOR ALL CLAIMS UNDER THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY) EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY CLIENT HEREUNDER IN THE TWELVE MONTH PERIOD PRECEDING THE ACT GIVING RISE TO ANY SUCH CLAIM FOR DAMAGES.

7. CONFIDENTIALITY
(a) Confidential Information. "Confidential Information" means any information received by one party (the “receiving party”) from the other party (the “disclosing party”) and which the receiving party has been informed of or has a reasonable basis to believe is confidential to the disclosing
party, unless such information: (1) was known to the receiving party prior to receipt from the disclosing party; (2) was lawfully available to the public prior to receipt from the disclosing party; (3) becomes lawfully available to the public after receipt from the disclosing party through no act or omission on the part of the receiving party; (4) corresponds in substance to any information received in good faith by the receiving party from any third party without restriction as to confidentiality; or (5) is independently developed by an employee, contractor or agent of the receiving party who has not received or had access to such information as demonstrated by contemporaneously prepared documentation. (b) Confidentiality Obligations. Each party agrees to maintain Confidential Information received from the other party in confidence and shall not disclose such Confidential Information to any third party without the prior written approval of the disclosing party. A receiving party may disclose Confidential Information if legally compelled to comply with any order of a court or any applicable rule, regulation or law of any jurisdiction. In the event that a receiving party is required by judicial or administrative process to disclose Confidential Information of the disclosing party, it shall promptly notify the disclosing party and allow the disclosing party a reasonable time to oppose such process. Each party shall protect Confidential Information of the other by using the same degree of care that the party uses to protect its own confidential information of like nature, but not less than a reasonable degree of care, to prevent unauthorized disclosure or use of such Confidential Information. Client agrees that it shall not disclose to any third party any information obtained through the use of the Applications (except for the Client’s own data). Ivy acknowledges that Client is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon Client’s written request, Ivy will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, Texas Government Code, to Client in a non-proprietary format acceptable to Client. As used in this provision, “public information” has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which Client has a right of access. Ivy acknowledges that Client may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

8. MISCELLANEOUS
(a) Assignment. Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party. (b) Force Majeure. Neither party shall be liable to the other by reason of any failure of performance hereunder (except failure to pay) if such failure arises out of causes beyond such party’s reasonable control, despite the reasonable efforts and without the fault or negligence of such party. Any party experiencing such an event shall give as prompt notice as possible under the circumstances. Without limiting the generality of the foregoing, neither party shall be liable to the other party in any way for any failure or delay in the performance of its obligations hereunder which failure is caused, directly or indirectly, by the failure of any matter for which the other party is responsible under this Agreement. (d) Waiver. Failure to insist upon strict compliance with any provision of this Agreement shall not be deemed a waiver of such provision or any other provision hereof. (e) Independent Contractors. The execution of this Agreement shall not create any agency, partnership, joint venture, association, or any other relationship between the parties other than
that of independent contracting parties. (f) Governing Law. This Agreement shall be interpreted and governed in all respects by the substantive laws of the State of Texas without regard to any conflict of law provisions. (g) Complete Agreement. This Agreement represents the entire understanding of the parties with respect to its subject matter, and supersedes any other prior or contemporaneous agreements or understandings, whether written or oral, concerning Confidential Information. This Agreement may only be changed by the mutual agreement of authorized representatives of the parties in writing. (h) Notices. All notices or reports permitted or required under this Agreement shall be in writing and shall be sent to the person executing this agreement at the address indicated above.

9. STATE CONTRACTING REQUIREMENTS
Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The Texas Family Code requires the following statement: “Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Ivy agrees that any payments owing to Ivy under this Agreement may be applied directly toward certain debts or delinquencies that Ivy owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Prohibited Bids and Agreements. A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The Texas Government Code requires the following statement: “Under Section 2.155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”

Venue. Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against Client shall be in Brazos County, Texas.
Force Majeure. Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
Dispute Resolution. The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Client and Ivy to attempt to resolve any claim for breach of contract made by Ivy that cannot be resolved in the ordinary course of business. Ivy shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Client, who shall examine Ivy’s claim and any counterclaim and negotiate with Ivy in an effort to resolve the claim.

Access by Individuals with Disabilities. Ivy represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Client under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent Ivy becomes aware that the EIRs, or any portion thereof, do not comply then Ivy represents and warrants that it will, at no cost to Client, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

a. REQUIREMENT AND STANDARDS. Ivy certifies that each information and communication technology (“ICT”) product or service furnished under this Agreement satisfies the requirements (including exceptions) specified in the regulations [36 CFR Part 1194] implementing Section 508 of the Rehabilitation Act, including the Web Content Accessibility Guidelines (WCAG) 2.0 Level A and Level AA Success Criteria and Conformance Requirements (2008) and the functional performance criteria.

b. DOCUMENTATION. Ivy shall maintain and retain, and make available to Client for review upon request, records of any testing or simulations conducted and all other documentation of the measures taken to ensure compliance with the applicable requirements and functional performance criteria.

c. REMEDIATION. If Client notifies Ivy that any furnished ICT product or service is not in compliance with such requirements and standards, Ivy shall, at no cost to Client, remediate or replace the non-compliant ICT products or services within the period specified by Client. If Ivy fails to complete the remediation or replacement within the specified time, Client may terminate this Agreement without liability or have the necessary remediation performed on Client’s behalf, and Ivy shall promptly reimburse Client for any expenses incurred by Client on such remediation.

Franchise Tax Certification. If Ivy is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Ivy certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Ivy is exempt from the payment of franchise (margin) taxes.

Products and Materials Produced in Texas. Ivy agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under this
Agreement, Ivy will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

Loss of Funding. Performance by Client under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary funds, Client will issue written notice to Ivy and Client may terminate this Agreement without further duty or obligation hereunder. Ivy acknowledges that appropriation of funds is beyond the control of Client.

Prompt Payment Act. Payment from Client will be due thirty (30) days from the date Client receives the invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code.

State Auditor’s Office. Ivy understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor’s Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Ivy agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Ivy will include this provision in all contracts with permitted subcontractors.

Non-Waiver. Ivy expressly acknowledges that Client is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Client of its right to claim such exemptions, privileges, and immunities as may be provided by law.

Ivy Certification regarding Boycotting Israel. Pursuant to Chapter 2270, Texas Government Code, Ivy certifies Ivy (1) does not currently boycott Israel; and (b) will not boycott Israel during the Term of this Agreement. Ivy acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Ivy Certification regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Ivy certifies Ivy (1) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Ivy acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

Conflict of Interest. By executing and/or accepting this Agreement, Ivy and each person signing on behalf of Ivy certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of The Texas A&M University System (“TAMUS”) or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by Client or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
Notices. Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonably means and will be effective when actually received. Client and Ivy can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

Client:  
Texas A&M University  
Attention: Dolores Gonzales  
209 John K. Koldus  
College Station, TX 77843-1233  
Phone: +1 979 845 4224  
E-mail: dgonzales@tamu.edu

Ivy:  
Ivy.ai  
Attention: Mary Frances Coryell  
4703 Carlton Crossing Drive  
Durham, NC 27713  
Phone: 843-697-3073  
E-mail: mfc@ivy.ai

IN WITNESS WHEREOF, the parties hereto have executed this Agreement intending to be legally bound as of the Effective Date.

Texas A & M University  
By: ____________________________  
Name: Robert C. Bounds  
Title: Director, Procurement Services  
Date: 3.28.2018

Ivy.ai, Inc.  
By: ____________________________  
Name: Mark McNasby  
Title: CEO  
Date: 4/9/2018

EXHIBIT A: Modules

[ x ] Career Services in Chat Channel only
EXHIBIT B: Fees

Upon execution of this Agreement, the Client will be invoiced the Annual Service Fee set forth below. The Client will be invoiced for the Annual Service Fee in subsequent years thirty (30) days prior to the Renewal Date. The Renewal Date is based upon the Effective Date as follows: if the Effective Date is between the first (1st) and sixteenth (16th) of a given month, the Renewal Dates in subsequent years will be the sixteenth (16th) of that same month; if the Effective Date falls between the seventeenth (17th) and thirty-first (31st) of a given month, the Renewal Dates in subsequent years will be the second (2nd) of the following month. Payments shall be due and paid net thirty (30) days and all invoices shall be settled thirty (30) days after the date of such invoice. Payments not received within thirty (30) days of invoice shall be considered “past due” and will accrue past due interest at a rate of eighteen percent annual interest or the maximum rate allowed under applicable law.

$29,000 per year