

Purchase Order	Marshall University Office of Purchasing One John Marshall Drive Huntington WV, 25755-4100 Direct all inquires regarding this order to: (304) 696-2821	Purchase Order # MU18SPTSMED
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TO: ATTN: MUZZY BASS CEO VIVATURE INC 5050 SPRING VALLEY ROAD DALLAS TX 75244 PH. 972-367-4831	Vendor Code: FEIN# 45-5355362	Ship to: n/a Bldg: n/a Room #:	THIS ORDER IS SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS SET FORTH HEREIN WVFIMS Account #:
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P.O. Date	FY	Buyer	Ship Via	F.O.B	Terms	Contract #
04/06/2018	2018	AD				

		<u>AGREEMENT</u> This agreement constitutes acceptance of contract made by and between MARSHALL UNIVERSITY, on behalf of the Governing Board, and <u>Vivature, Inc.</u> for <u>Athletics' training software and billing solution</u> Services shall begin <u>April 5, 2018</u> and extend through <u>five years after the "go live" date as per section 2.4</u> . All in accordance with the agreement attached hereto and made a part hereof. Schedule of payment \$ <u>As</u> per <u>Agreement</u> . <table style="margin-left: 20px;"> <tr><td>Fee</td><td>\$</td><td>1,000/month</td></tr> <tr><td>Travel Expense</td><td>\$</td><td></td></tr> <tr><td>Other Expense</td><td>\$</td><td>35%</td></tr> <tr><td>Total \$</td><td>\$</td><td>per agreement</td></tr> </table> Approved as to sufficiency of form and manner of execution this _____ day of _____, 20 _____. <u>N/A</u> Attorney General of the State of West Virginia By: _____ Chief Counsel THIS ORDER IS EXEMPT FROM ALL SALES TAX LIMIT EACH INVOICE TO A SINGLE PURCHASE ORDER NUMBER	Fee	\$	1,000/month	Travel Expense	\$		Other Expense	\$	35%	Total \$	\$	per agreement	
Fee	\$	1,000/month													
Travel Expense	\$														
Other Expense	\$	35%													
Total \$	\$	per agreement													

Line No.	Fund	Org.	Account	Encumber Amount	
1.	349120	7062	70274	Various	Total: OPEN END
2.					
3.					
4.					

Mail Original Invoice and 1 Copy to: Marshall University Accounts Payable One John Marshall Drive Huntington, WV 25755-4500	 Authorized Signature	4-6-18 Date
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Prepared by: Vinnie Moore
Date: 10/18/2017



Prepared for:

Marshall University

Signed Contract Date: 4-5-18
Signed by: MIKE HAMRICK
Approved by: (Vivature) _____



Professional Service Agreement
AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is entered into effective as of the 5th day of April, 2017 (the "Effective Date") by and between Marshall University, a state of West Virginia institution of higher education (the "University") with the Tax ID number of 55-6000789 and Vivature, Inc., a Texas corporation ("Vivature") with the Tax ID number of 45-5355362.

WHEREAS, Vivature and the University have agreed to establish an independent contractor relationship wherein Vivature will provide contract services to the University; and WHEREAS, the purpose of this Agreement is to set forth the terms and conditions under which Vivature will furnish, and the University will accept, contract services. NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Defined Terms. For the purpose of this Agreement, the following terms shall have the meaning ascribed thereto below unless otherwise specified or clearly required by the context in which such term is used:

- o "Agreement" shall have the meaning provided in the preamble to this Agreement.
- o "Athletics" refers to the University sports medicine department.
- o "Billing" shall mean those services provided hereunder to collect monies owed from third parties.
- o "Clinic Charges" shall mean charges based on industry standard Usual, Customary and Reasonable.
- o "Collections" shall mean billed charges for CPT Codes, less any deductibles, co-payments, co-insurance, non covered services, contractual adjustments, and bad debt, collected by Vivature or its agents on behalf of the University, from Health Benefit Plans, pursuant to the third party billing services provided pursuant to the terms of this Agreement.
- o "Confidential Information" shall have the meaning provided in Section 5.1.
- o "CPT Codes" shall mean the numbers developed, maintained and copyrighted by the American Medical Association assigned to every task and service a medical practitioner may provide to a patient including medical, surgical and diagnostic services.
- o "Verification of Benefits" means providing the University a student's detailed primary insurance benefits where available by the carrier.
- o "Effective Date" shall have the meaning provided in the preamble to this Agreement
- o "Go Live Date" shall mean the first day whereby Vivature submits an encounter form to a Health Benefit Plan. If University is a software only client (Bronze, Silver or Gold Level) the Go Live Date is date agreement is signed.
- o "Health Benefit Plan" shall mean any health benefit plan regulated under the Insurance Code, including an individual or group health insurance policy or any evidence of coverage issued by a health maintenance organization.
- o "Medical Services" shall mean any health care services provided by or under the supervision of the University.
- o "NEXTT End User License" shall mean the end user license agreement accompanying the NEXTT Software.
- o "NEXTT Hosted Software" shall mean the Internet websites and services hosted by Vivature and made available at <http://www.vivature.com> under the terms and conditions of the Vivature Terms of Use Agreement, the Vivature Privacy Notice and Policy, and the Vivature Security Policy.
- o "NEXTT Kiosk Software" means the Kiosk related software portal. The term NEXTT Kiosk Software shall explicitly exclude any Source Code.
- o "Object Code" shall mean the machine-readable computer software code substantially in binary form that is directly executable by a computer after processing without compilation or assembly.
- o "Representatives" shall have the meaning provided in Section 5.1
- o "Savings" means the difference between billed charges and the reduced rate Vivature procures on behalf of the University.
- o "Services" shall consist of all of the services set forth on Exhibit A to this Agreement, which shall be provided exclusively by Vivature to the University.
- o "Source Code" shall mean any computer software code including statements, instructions, and data displayed in a form readable and understandable by a programmer of ordinary skill.
- o "University" shall have the meaning provided in the preamble to this Agreement.
- o "Mark of the School" – Schools logo or mascot used for marketing efforts.
- o "Vivature" shall have the meaning provided in the preamble to this Agreement.
- o "Vivature Privacy Notice and Policy" shall mean the privacy notice and policy accompanying the Vivature Hosted Software, a copy of which is available at <https://www.vivature.com>
- o "HIPAA" shall have the meaning provided in Section 6.1.
- o "HITECH" shall have the meaning provided in Section 6.1.
- o "Licenses" shall have the meaning provided in Section 3.1(a).
- o "Material Breach" shall have the meaning provided in Section 6.4.
- o "Insurance Billing and related Services" means the 35% of all collections payable to Vivature by the University or retained by Vivature for all Billing and Billing related services.
- o "NEXTT Software" shall mean NEXTT Object Code and executable code software that facilitates managing patient encounters with the University under the terms and conditions of the NEXTT End User License.





**Professional Service Agreement
ARTICLE II
SERVICES OF VIVATURE**

Section 2.1 Services to be Provided. Beginning on the Effective Date, Vivature shall provide, or cause to be provided, to the University the Services selected by University in Section 2.1

Services Needed	Type	Quantity
NExTT Software	Athletic, Nutrition, Counseling, Medical, & Academic	1
Billing Services	Athletic, Medical, Nutrition & Counseling	1
Kiosk(s)	Countertop, Standalone, Wall mount	As many as needed
iPad(s)	Standard	TBD
Verification of Insurance	Standard	Monthly
Administrative Services	Standard	1
Credentialing & Contracting	Standard	1

University agrees to provide such reasonable assistance requested by Vivature so as to allow it to provide the contracted Services to be provided hereunder.

Section 2.2 Fee for Services.

- **Billing Services:**
Revenue Share - On or around the 25th of each month, but no later than the 30th of each month, a Monthly Accounting Statement will be delivered by Vivature to the University pursuant to Section 2.3, the University shall remit to Vivature an amount equal to 35% of Net Collections and will retain an amount of 65% of Net Collections.
- **Kiosk, iPads, Verification of Insurance & Administrative Services:** Vivature will receive an amount of \$12,000.00 annually (\$1,000.00 monthly) from the gross collections generated from insurance billing, for the usage of the Kiosk and iPads (tools). Provided that, in any month that the revenues do not exceed the fee, the unpaid balance will be carried over until such time as the revenues will exceed the fees and be deducted there from. Monthly fees in arrears will be paid in the order of the oldest first, until all fees are paid. These tools are the property of Vivature. Should damage occur to the kiosk(s) and/or iPads resulting from normal "wear and tear", Vivature will replace these units at Vivature's cost. Damage or handling caused by the University that causes these unit(s) to not work or have physical damage or defective appearance, will result in the school paying Vivature the actual replacement cost of the unit(s).

Section 2.3 Monthly Accounting Statements. On or before the 25th day of each month, but no later than the 30th of each month, during the Term of the Agreement, Vivature will submit to the University an invoice covering Fee for Services and Work performed for University during the previous month, Each invoice will be accompanied by documentation to support the invoice amount. University will pay Vivature for Work listed on the invoice on a Net 30 term.

Section 2.3.1 Accounting Process – Pursuant to Sections 2.2 and 2.3 of the Agreement, the following process will be followed:

- 2.3.1.1 The university will provide Vivature with the bank account and routing number to allow them to process all payments for claims to the provided account.
- 2.3.1.2 Any payments received by Vivature on behalf of the University which cannot be immediately processed by Vivature, shall be immediately forwarded to the contact for the University for processing. No payments shall be held by Vivature for processing.
- 2.3.1.3 The university will provide Vivature with an electronic deposit report daily if revenue is received the previous day and posted in the system in a CSV format to a designated contact at Vivature.





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- 2.3.1.4 Vivature will provide the University an accounting monthly of all collections and when appropriate submit an invoice with the monthly report for any amounts due to Vivature based on the contract. The University will place any undisputed invoice in line for payment within seven business days of receipt. Marshall shall notify Vivature as soon as practicable if it disputes the invoice amount.
- 2.3.1.5 The University reserves the right to inspect all accounting records related to the contract with proper notice.

Section 2.4 Term. This Agreement shall be effective on the Effective Date and shall remain in effect for an initial term ending five years after the Go Live Date, unless earlier terminated by either party upon 90 days' written notice to the University or terminated by the school for a material breach.

Section 2.5 Access to Vivature Systems. The University acknowledges and agrees that it will have no claims of ownership or access to Vivature computer or information systems used in connection with the performance of the Services, except that Vivature agrees to allow the University to periodically audit their records, which may involve access to their systems. All ideas, processes or other resources used by Vivature to provide the Services developed by Vivature pursuant to this Agreement will be the exclusive property of Vivature.

Section 2.6 Use of the School Mark. The University agrees to allow Vivature to use the "Mark" of the school for internal Marketing efforts to gain other clients. Vivature would send all proposed marketing material to the University for Final Approval. Any material not deemed "approved" by the University would not be used by Vivature or would remove the "School Mark" from the material. The University also agrees to provide Vivature with one football helmet and one basketball for display in its corporate headquarters. Provided that, at no time shall the University, its Board of Governors, employees, coaches, students, representatives or agents be depicted in such a manner as to appear to be endorsing a particular product of Vivature.

Section 2.7 Third Party Billing Agent. On behalf of and for the account of the University, Vivature shall establish and maintain credentialing, contracting, credit, and billing/collection policies and procedures, claims adjudication and shall use Vivature's reasonable best efforts to timely bill, pay and collect all fees for all billable Medical Services and claims adjudication services. In connection with the credentialing, contracting, claims adjudication and billing/collection services to be provided hereunder, the University hereby grants to Vivature a power of attorney and appoints Vivature as the University's exclusive true and lawful agent and attorney-in-fact coupled with an interest, and Vivature hereby accepts such power of attorney and appointment:

- (a) to bill and adjudicate claims in the Group's name and on the Group's behalf, all claims for reimbursement or indemnification for all covered billable Medical Services and claims adjudication services;
- (b) to contact insurance companies, patients, referring physicians, hospitals, financial institutions, and any other party deemed necessary to obtain information necessary to perform its duties under this Agreement;
- (c) to receive and make payments from insurance companies, prepayments received from healthcare plans, all other third-party payers, and patients; to take possession, any notes, checks, money orders, electronic deposits, wire transfers, and other instruments received in payment of accounts receivable on behalf of the University and process the same in accordance with Section 2.3.1 herein

In so doing, Vivature will process all of the University's medical insurance claims for Medical Services rendered by University during the term of this Agreement. Vivature will also perform all such follow-up on claims as Vivature, in its sole discretion, deems necessary and appropriate.

ARTICLE III

REPRESENTATIONS OF VIVATURE

Section 3.1 Representations of Vivature. Vivature represents to and covenants with the University as follows:

- (a) Vivature is a corporation duly organized and validly existing under the laws of the State of Texas. Vivature possesses all licenses, permits, variances, exemptions, orders, consents, approvals, authorizations and qualifications (collectively, "Licenses") necessary to conduct its business, own its properties and perform its





Professional Service Agreement

obligations hereunder, except where failure to hold one or more Licenses would not reasonably be expected to have a material adverse effect on Vivature.

- (b) Vivature has all requisite power and authority to own its properties and assets and to carry on its business as currently conducted. Vivature has all requisite power and authority to execute, deliver and perform its obligations under this Agreement.
- (c) This Agreement has been duly executed and delivered by Vivature and constitutes a valid and legally binding obligation of Vivature, enforceable against Vivature in accordance with its terms, and the University is entitled to the benefits thereof.
- (d) University acknowledges that Vivature has not made and will not make any express or implied warranties or representations that the services provided by Vivature will result in any particular amount or level of income to the University.

**ARTICLE IV
REPRESENTATIONS OF THE UNIVERSITY**

Section 4.1 Representations of the University. The University represents to and covenants with Vivature as follows:

- (a) The University is a State of West Virginia Institution of higher education and validly exists under the laws of the State of West Virginia. The University possesses all Licenses necessary to conduct its business, own its properties and perform its obligations hereunder, except where failure to hold one or more Licenses would not reasonably be expected to have a material adverse effect on The University.
- (b) The University has all requisite power and authority to own its properties and assets and to carry on its business as currently conducted. The University has all requisite power and authority to execute, deliver and perform its obligations under this Agreement.
- (c) This Agreement has been duly executed and delivered by the University and constitutes a valid and legally binding obligation of the University, enforceable against the University in accordance with its terms, and Vivature is entitled to the benefits thereof.
- (d) The University acknowledges that Vivature serves as the exclusive vendor for the Services described in Exhibit A.
- (e) The University shall provide Vivature all needed documentation to perform services including but not limited to the daily documentation of all injuries and treatments for all medical staff including but limited to; athletic trainers, doctors, physical therapist, register dieticians, etc. for services performed in the athletic training room(s) or other medical locations used by the athletic department.

**ARTICLE V
CONFIDENTIALITY**

Section 5.1 Confidentiality. The parties acknowledge that in connection with this Agreement, they may gain access to confidential material and information that is proprietary to the other party ("**Confidential Information**"). Unless otherwise required by law, the parties agree to the extent that any such material and information is provided to a party or to its officers, directors, employees, accountants, attorneys, lenders and advisors (collectively, "**Representatives**") solely in connection with the provision of Services under this Agreement:

- (a) To hold Confidential Information in strict confidence and not make use thereof other than for performance under or enforcement of this Agreement;
- (b) To reveal Confidential Information only to those Representatives requiring such information in connection with the performance of the Services; and
- (c) Not to reveal Confidential Information to any third person who is not a Representative of a party, except as necessary in connection with the performance or evaluation of the Services, and then only to the extent that such persons agree to be bound by the confidentiality obligations set forth herein.
- (d) The term "**Confidential Information**" shall not include any such information (a) as is or may become generally available to the public without breach of this Agreement, (b) previously known to the protecting party at the time of disclosure or acquired from a source other than the protected party without restriction on disclosure imposed on the protecting party by such source or (c) required to be disclosed by the protecting party in order to comply with any





Professional Service Agreement

applicable law, order, regulation, or ruling provided that, the protected party shall first be given, to the extent available pursuant to the such applicable law, order, regulation or ruling, an opportunity to prevent or restrict the scope of any such disclosure.

**ARTICLE VI
MISCELLANEOUS**

Section 6.1 HIPAA and HITECH. Both the University and Vivature acknowledge that certain data necessary to perform the Services may be subject to the provisions of the Health Insurance Portability and Accountability Act ("**HIPAA**") and the Health Information Technology for Clinical and Economic Health Act ("**HITECH**"), and each party assumes the responsibility for its organization's compliance with HIPAA, HITECH and all regulations and rulings there under.

Section 6.2 FERPA. Vivature acknowledges and agrees that the students' education records and any personally identifiable information from such education records (collectively "Student Information") created by Vivature and/or provided by the University to Vivature is subject to the confidentiality provisions of the federal Family Educational Rights and Privacy Act, 20 USC § 1232g, ("FERPA") and its implementing regulations (34 C.F.R. Part 99). Accordingly, Vivature agrees not to disclose or re-disclose any Student Information to any other party without the prior written consent of the Educational Institution and the student(s) to whom the Student Information pertains unless the disclosure or re-disclosure falls under a FERPA exception allowing disclosure without the student(s)' consent. Vivature also agrees to only use Student Information for the purpose(s) for which the Student Information was disclosed. For the purposes of this Agreement, pursuant to FERPA, Educational Institution hereby designates Vivature as an Educational Institution official with a legitimate educational interest in the educational records of the Student(s) who participate in the Program to the extent that access to the records is required by Vivature to carry out the Program.

If Vivature receives a court order, subpoena, or similar request for Student Information, Vivature shall, to the extent permitted by law, notify the Educational Institution within two (2) business days of its receipt thereof, and reasonably cooperate with the Educational Institution in meeting the Educational Institution's and/or Vivature's FERPA obligations in complying with or responding to such request, subpoena, and/or court order.

Section 6.2 Survival of Representations and Warranties. All covenants, agreements, representations and warranties made in this Agreement shall survive for one year from either the Termination Date or the expiration of this Agreement.

Section 6.3 Notices. Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested, addressed as follows: or to such other address and to the attention of such other person or officer as either party may designate by written notice pursuant to this Section 6.3.

if to the University:
Marshall University
Address: 2001 Third Avenue, Huntington,
WV 25703
Attn: Mike Hamrick
Title: Director of Athletics
Telecopier: 304-696-6448

if to Vivature:
Vivature, Inc.
5050 Spring Valley Road, Dallas, TX 75244
Attn: Muzzy Bass
CEO
Telecopier: 214-367-3434

Section 6.4 Termination. The University may terminate this Agreement if (i) Vivature fails to perform its obligations as set forth in Article II according to reasonable industry standards (each such failure, a "**Material Breach**") and (ii) such Material Breach remains unremedied after 60 days following the date on which the University first provided Vivature with written notice of the details of such alleged Material Breach (provided, that if such Material Breach is not capable of being cured within 60 days of such written notice, and if Vivature, upon receipt of such written notice, promptly commences and diligently pursues the cure to completion as soon as reasonably practicable, then such 60-day period shall be extended for a mutually agreed upon period of time which is reasonably necessary to cure the Material Breach).

Section 6.5 Effect of Termination. Upon termination of this Agreement, all rights and obligations of each party hereunder shall cease as of the date of the termination except for the parties' rights and obligations under Sections 2.2, 2.3, 5.1 and Article VI, which shall survive termination of this Agreement. Notwithstanding the foregoing, the termination of this





Professional Service Agreement

Agreement pursuant to any of the provisions hereof shall be without prejudice to any rights, or diminution of any obligation that have accrued up to the date of termination or liability of either party, that may have accrued prior to the effective date of such termination.

Section 6.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

Section 6.7 **Assignment.** No assignment of this Agreement or any of the rights or obligations set forth herein by either party shall be valid without the specific written consent of the other party.

Section 6.8 **Amendments.** This Agreement supersedes all previous contracts between the parties and constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. No oral statement or prior written material not specifically incorporated herein shall be of any force and effect, and no changes in or additions to this Agreement shall be recognized unless incorporated herein by amendment which shall only be valid with the specific written consent of both parties.

Section 6.9 **Force Majeure.** The parties shall not have any obligation to perform any specific Service hereunder if its failure to do so is caused by or results from any act of God, governmental action, act of war, act of terrorism, natural disaster, strike, or any other cause or circumstance beyond the control of the parties.

Section 6.10 **Waiver.** No waiver by either party of any term or breach of this Agreement shall be construed as a waiver of any other term or breach hereof or of the same or a similar term or breach on any other occasion.

Section 6.11 **Patient Referrals.** The parties agree that no provision of this Agreement shall be construed to induce or encourage the referral of patients or the purchase of health care goods or services. The parties acknowledge that there is no requirement under this Agreement or any other agreement between University and Vivature or any third party that Vivature refer any patient, or influence the referral of any patient, to utilize the University's Medical Services for the provision of any healthcare goods or services. No payment under this Agreement is in return for the referral of patients to Vivature or in return for purchasing or ordering healthcare goods or services from University.

Section 6.12 **Fair Market Value.** Payment of any fees or other remuneration under this Agreement is acknowledged as the parties' negotiated agreement as to the reasonable fair market value of the services and other items furnished by Vivature pursuant to this Agreement, considering the nature and volume of the services required and the risks assumed by Vivature.

Section 6.13 The parties hereby agree that the following addenda are attached hereto and made part of this agreement:
A. MU-96
B. Cloud Computing Addendum

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

Marshall University

By: 

Name: Mike Hamrick
Title: Director of Athletics

VIVATURE INC.

By: 

Lance Wilson
Executive Vice-President





Professional Service Agreement

Date: 4-3-18

Date:





Professional Service Agreement

Exhibit A

SERVICES

Services to be provided by Vivature to the University shall be based on the selections by University in Section 2.1.

Beginning on the Effective Date, Vivature will provide, and the University will permit Vivature to provide, the following services for University. These services, which are comprehensive in scope, will include the following:

If Billing Services is selected in Section 2.1

1. **Credentialing.** Vivature will manage the process that includes the documentation required to have University's licensed and qualified clinical staff credentialed in the appropriate provider networks, including but not limited to developing and maintaining provider CAQH files.
2. **Contracting.** Vivature will negotiate on behalf of the University to obtain favorable contracts if applicable. In most cases Vivature will attempt to submit claims as a recognized out of network provider. In cases were Vivature determines it is more favorable for the client, Vivature will work with the University to get clinicians empaneled as in-network providers.
3. **Development of infrastructure to support third party billing.** Vivature will work with University to revise and implement an effective patient data collection (or "encounter") form (sometimes known as a "super-bill") to support third party billing and to establish policies and procedures regarding obtaining insurance information, verifying coverage, providing care for indigent or uninsured students, and documentation of services provided. Vivature will also provide fee schedule recommendations.
4. **Training.** Vivature will provide training before third party billing begins for University staff members to help them prepare effectively for their roles regarding third party billing. The training will include preparation in topics such as proper documentation of clinical visits to support evaluation/management coding levels; front desk procedures; preparing and submitting encounter forms; and responding to inquiries or requests from insurance carriers. Vivature will provide on-going training as needed for current or new staff. Depending on the type of training, this can be done on-site, via web, or conference call.
5. **Strategy.** Vivature will help the University design an overall strategy for implementing third party billing, including a communications/public relations plan, professional staff development plan, and training plan. Vivature will also assist the University in clarifying and explaining the respective purposes and uses of the health fee, fee-for-service charges, and third party revenue and in making key policy decisions about the collection of co-payments and handling of deductibles.
6. **Processing of health insurance claims.** Vivature will process health insurance claims off-site for reimbursement of charges for Professional Clinical Services provided to students at the University that are covered by any and all Health Benefit Plans.
7. **Claims adjudication.** Vivature will recover potential third-party billing revenue for the University using tested, proven software; experienced billing personnel; effective quality assurance procedures; assertive collections techniques, and careful tracking of individual claims through the billing system.
8. **Coding and compliance.** Certified CPT and ICD10, coders will verify the procedures and diagnoses described and documented in the submitted charts, utilizing the most current ICD10, and CPT coding software. Vivature catches most errors and checks all on-line and mailed insurance reports to correct and resubmit claims promptly.
9. **Document storage.** Vivature will store electronic image copies of the University's patient demographic sheets, charge tickets, and other source documents for up to seven years. Payment registers, Medicare, Medicaid and other insurance company payment registers, and customer correspondence will be stored for as long as legally required and/or necessary.
10. **Patient Services.** Vivature will manage the process of accepting all forms of communication from students and parents with respect to health insurance claims. Vivature will provide the University with a toll free number for its patients to contact Vivature with any questions related to claims.

If NExTT Software is selected in Section 2.1

NExTT Software. During the term of the Services Agreement, the University will request a license to install, access, and use Vivature's NExTT Software. Should the University use the NExTT software to access or input information, within the NExTT Hosted Software during the term of the Services Agreement, Vivature shall provide the University with a revocable, non-





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exclusive, nontransferable, non-sub-licensable, and limited right to install, access, and use the NExTT Hosted Software for the term of the Services Agreement solely in accordance with: (i) the Software Terms of Use Agreement; (ii) the NExTT Privacy Notice and Policy and End User License. Any such license granted pursuant to this Section shall terminate immediately and

without notice upon the termination of the Services Agreement. The NExTT Software may be updated by Vivature from time to time, at Vivature's sole option, to include additional functions and features. There is no additional charges to Marshall University for NExTT Software or any future software upgrades.

If Verification of Insurance is selected in Section 2.1

Vivature will verify each student's primary insurance information with participating insurance companies in a national database. The frequency of the verification report will depend on the type of verification of insurance selected in Section 2.1, Vivature will provide either a monthly or semester report. In addition, the semester report will only show if the athlete's coverage is active or inactive. The monthly reports will reflect as much detail as is provided by the insurance carrier.

If Primary Administrative Services is selected in Section 2.1

Vivature will perform all of the data entry functions of setting up the NExTT software, entering new athletes basic information annually, rolling over student classifications each year, setting up custom forms and documents, and any other needed services the university should request within reason and as needed.

Exhibit B





**Professional Service Agreement
Medical Provider Information**

Name			
Point of Contact (Office Manager)			
Contact Phone #		Contact email	
Individual NPI #		Contact's Fax #	
License #			
State of License			
Specialty			
Date of Birth		CAQH #	
Social Security Number		CAQH User Name (Optional)	
DEA#		CAQH Password (Optional)	

This provider agrees to oversee the athletic training room at the university by providing the above listed information and allow for the athletic trainers to submit claims to health insurance companies under this provider's medical supervision, as prescribed by state law, in an attempt to be reimbursed for the services provided.

The CAQH# information is used to add a new practice location, allowing the athletic training room to bill at the university. Should this medical provider not want to provide this information on paper, we are happy to schedule a call to take the information or instruct you how to update the CAQH file with the correct information on your own.



Professional Service Agreement



Marshall University
Cloud Computing Contract Addendum

“**Institution**” as used herein means Marshall University, its Board of Governors, Colleges, Schools, and Departments.

“**Vendor**” as used herein means Vivature, INC.
(Insert Vendor Name Here)

Definitions

“**Confidential Information**” is defined as any and all information whose collection, disclosure, protection, and disposition is governed by state or federal law or regulation, particularly information subject to the Family Educational Rights and Privacy Act (FERPA), the Gramm-Leach-Bliley Act (GLBA), or Marshall University Policy [<http://www.marshall.edu/board/board-of-governors-policies/>]. This information includes, but is not limited to, Social Security numbers, student records, financial records regarding students (or their parents or sponsors), financial and personal information regarding Marshall University employees, and other personally identifiable information identified by law.

“**Covered Data**” includes any institutional data defined as “confidential information”.

“**Institution Data**” includes data uploaded by users of the service and communications between the user, the Institution, and Vendor.

“**Notification Event**” includes Vendor system that may access, process or store University data is subject to unintended access. Unintended access includes compromise by a computer worm, search engine web crawler, password compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.

“**Vendor User**” includes the Vendor and its employees, agents, contractors, and other persons associated with Vendor.

Use of the Data

The Vendor agrees that data provided to them during the provision of service shall be used only and exclusively to support the service and service execution, and not for any other purpose. Unless expressly permitted by the written consent of an Institution official authorized to give such consent, Vendor and its employees, agents, contractors, and other persons associated with Vendor (collectively, the "Vendor Users") are only permitted to use, reuse, distribute, transmit, manipulate, copy, modify, access, or disclose the Institution Data to the extent necessary for Vendor to implement and maintain the information as set forth in this Addendum. Except as otherwise specifically provided for in this Agreement, the Vendor agrees that Institution Data will not be shared, sold, or licensed with any third-

party, except approved sub-contractors, without the express written approval of the Institution and the Senior Vice President for Information Technology.

Vendor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of Institution data and any non-compliance with the data privacy and security requirements by Vendor Users.

Data Protection

Upon termination, cancelation, expiration or other conclusion of the Agreement, Vendor shall return the Covered Data to Institution unless Institution requests that such data be destroyed. This provision shall also apply to all Covered Data that is in the possession of subcontractors or agents of Vendor. Vendor shall complete such return or destruction not less than thirty (30) days after the conclusion of this Agreement. Within such thirty (30) day period, Vendor shall certify in writing to Institution that such return or destruction has been completed.

Compliance with Federal, State, and Local Laws and Regulatory Requirements; Vendor's product must be compliant with any Federal, State, and Local privacy laws or regulations applicable to the Institution, including but not limited to: the Family Educational Rights and Privacy Act (FERPA) (Pub. L. No. 93-380 (1974), codified at 20 U.S.C. § 1232g); the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. No. 104-191, § 264 (1996), codified at 42 U.S.C. § 1320d; Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. § 160 (2002), 45 C.F.R. § 164 subpts. A, E (2002); the Gramm-Leach-Bliley Act (GLBA) (Pub. L. No. 106-102 (1999), privacy protections are codified at 15 USC § 6801 et seq.).

Vendor agrees that it may create, have access to, or receive from or on behalf of Institution or students, or have access to, records or record systems that are subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. Section 1232g (collectively, the "FERPA Records"). Vendor represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by Institution in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Vendor protects its own Confidential Information; and (3) continually monitor its operations and take any action necessary to assure that the FERPA Records are safeguarded in accordance with the terms of this Agreement. At the request of Institution, Vendor agrees to provide Institution with a written summary of the procedures Vendor uses to safeguard the FERPA Records.

Vendor agrees to adhere to the additional FERPA requirements listed at the following web address: [\[http://ptac.ed.gov/sites/default/files/data-sharing-agreement-checklist.pdf\]](http://ptac.ed.gov/sites/default/files/data-sharing-agreement-checklist.pdf) if any of the data is used for research or a longitudinal study.

Notification of Security Incidents

Vendor, within one day of discovery, shall report to Institution any use or disclosure of Confidential Information not authorized by this Addendum or in writing by Institution. Vendor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, as reasonably requested by Institution.

Vendor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information or other event requiring notification. In the event of a breach of any of Vendor's security obligations or other event requiring notification under applicable law ("Notification Event"), Vendor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the Institution and its Board of Governors, officers, employees, agents and representatives from and against any claims, damages, or other harm related to such Notification Event.

Institutional Marks Protection

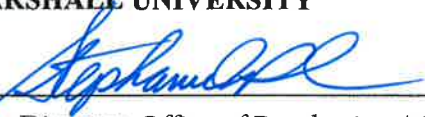
Use of Institution name, marks, or logos: All use by Vendor of Institution name, marks, and content must be approved in writing by Institution and the Senior Vice President of Communications. Institution reserves the right to review all uses of its name, marks or logos prior to their use by Vendor.

Indemnification

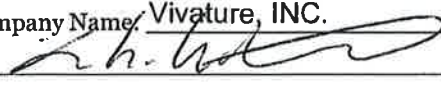
Vendor shall indemnify, defend and hold Institution harmless from all lawsuits, claims, liabilities, damages, settlements, or judgments, including Institution's costs and attorney fees, which arise as a result of Vendor's negligent acts, omissions or willful misconduct.

ACCEPTED BY:

MARSHALL UNIVERSITY

By: 
Title: Director, Office of Purchasing / CPO
Date: April 6, 2018

VENDOR

Company Name: Vivature, INC.
By: 
Title: Executive Vice-President
Date: 4-3-18

MU-96A

AGREEMENT ADDENDUM

Rev. 1/18

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** – Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Any disputes brought by Vendor arising out of the agreement and any counter-claims or cross-claims by Marshall University (“Marshall”) shall be presented to the West Virginia Legislative Claims Commission. Any disputes brought by Marshall University (“Marshall”) arising out of the agreement shall be presented in the Circuit Court of Cabell County, West Virginia, or other appropriate Court having jurisdiction over the matter.
2. **HOLD HARMLESS** – Any provision requiring Marshall to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** – The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State’s governing law.
4. **TAXES** – Provisions in the agreement requiring Marshall to pay taxes are deleted. As a State entity, Marshall is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will Marshall file any tax returns or reports on behalf of Vendor.
5. **PAYMENT** – Any reference to prepayment are deleted. Fees for software licenses, subscriptions, or maintenance are payable annually in advance. Payment for services will be in arrears.
6. **INTEREST** – Any provision for interest or charges on late payments is deleted. Marshall has no statutory authority to pay interest or late fees.
7. **NO WAIVER** – Any language in the agreement requiring Marshall to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** – Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, Marshall agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which Marshall may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** – Any provisions limiting Marshall’s right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** – Marshall recognizes an obligation to pay attorney’s fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** – Notwithstanding any clause to the contrary, Marshall reserves the right to assign the agreement to another State of West Virginia Agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Marshall prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** – Marshall, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor’s liability for direct damages is hereby deleted. Vendor’s liability under the agreement shall not exceed three times the total value of the agreement. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** – Marshall shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Marshall agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** – Any provision requiring Marshall to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. Marshall may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by Marshall prior to the end of any current agreement term.
16. **RENEWAL** – Any references to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** – Any provision requiring Marshall to purchase insurance for Vendor’s property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, Marshall does recognize a right of repossession with notice.
19. **ACCELERATION** – Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY** – Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** – All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties.
22. **DELIVERY** – All deliveries under the agreement will be FOB destination unless otherwise stated in the State’s original solicitation. Any contrary delivery terms are hereby deleted.
23. **PUBLICITY** – Vendor shall not, in any way or in any form, publicize or advertise the fact that Vendor is supplying goods or services to Marshall without the express written consent of Marshall.

- 24. **UNIVERSITY MARKS** – Vendor shall not, in any way or in any form use Marshall's trademarks or other intellectual property without prior written consent of Marshall.
- 25. **INTELLECTUAL PROPERTY** – Marshall will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising out of the agreement, and Vendor will execute any assignments of other documents necessary for Marshall to perfect such rights, provided that, for research collaboration pursuant to subcontracts under sponsored research agreements, intellectual property rights will be governed by the terms of the grant or contract to Marshall to the extent such intellectual property terms to apply to subcontractors.
- 26. **FERPA**. Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA). To the extent that Vendor receives personally identifiable information from education records as defined in (FERPA), Vendor agrees to abide by the limitations on re-disclosure set forth in which states that the officers, employees and agents of a party that receives education record information from Marshall may use the information, but only for the purposes for which the disclosure was made.

**ACCEPTED BY:
MARSHALL UNIVERSITY**

OFFICE OF PURCHASING

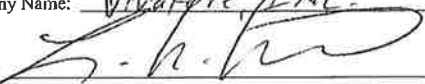
Signed: 

Title: Director, Office of Purchasing / CPO

Date: April 6, 2018

VENDOR

Company Name: Vivalpro, INC.

Signed: 

Title: Executive Vice President

Date: 4/3/18