

FLORIDA INTERNATIONAL UNIVERSITY

1. **Incorporation by Reference.** The Florida International University Board of Trustees ("FIU") and the undersigned ("Vendor") hereby incorporate this Supplemental Addendum – FERPA ("Addendum") into the agreement between FIU and Vendor (the "Agreement"). If this Addendum conflicts with the Agreement terms, this Addendum shall control.

2. **School Official.** In the course of providing services during the term of the Agreement, Vendor will be performing an institutional service or function for which FIU would otherwise use employees. Vendor may therefore have access to certain education records (as defined by 20 U.S.C. § 1232g(a)(4)(A) and 34 CFR § 99.3 and means to include, but is not limited to, transcripts, class lists, student course schedules, health records, student financial information, and student disciplinary records), Personally Identifiable Information (such as direct identifiers (e.g., a student's or other family member's name) and indirect identifiers (e.g., a student's date of birth, or mother's maiden name)) and other non-public information, including, but not limited to, student data, metadata, and user content (collectively, "Data") which are subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. Accordingly, Vendor shall be considered an FIU "School Official" pursuant to 34 CFR § 99.31(a)(1)(i)(B). Vendor shall remain subject to and comply with all requirements of FERPA applicable to its services, specifically including, but not limited to, § 99.33(a) governing the use and re-disclosure of Data from education records. Any Data held by Vendor will be made available to FIU upon request by FIU.

3. **Use of Data.** As a School Official, Vendor understands, acknowledges and agrees that it shall have access only to that Data in which it has a legitimate educational interest in, and that it shall remain under the direct control of FIU with regards to its use and maintenance of the Data. Vendor will only collect and use Data necessary to fulfill its duties and provide the services as outlined in the Agreement. Vendor may use de-identified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Vendor agrees not to attempt to re-identify de-identified Data and not to transfer de-identified Data to any party unless that party agrees not to attempt re-identification. Vendor is prohibited from mining Data for any purposes other than those agreed to by the parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited. Vendor will not change how Data are collected, used, or shared under the terms of this Agreement in any way without advance notice to and consent from FIU. Data may not be used for any purpose other than the specific purpose(s) outlined in this Agreement. Data cannot be shared with any additional parties without FIU's prior written consent except as required by law.

4. **Rights and License in and to the Data.** The Parties agree that all rights, including all intellectual property rights, shall remain the exclusive property of FIU, and Vendor has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give Vendor any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement. This includes the right to sell or trade Data.

5. **Data Security.** Vendor will store and process Data in accordance with industry best practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. Vendor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor will also have a written incident response plan, to include prompt notification of FIU in the event of a security or privacy incident, as well as best practices for responding to a breach of PII. Vendor agrees to share its incident response plan upon request.

6. **Audit.** Vendor agrees that, as required by FIU and/or applicable state and federal law, auditors from FIU, state, federal, or other agencies so designated by the State or FIU, shall have the option to audit the outsourced service. Records pertaining to the service shall be made available to auditors and FIU during normal working hours for this purpose.

7. **Return or Destruction of Data.** Within thirty (30) days of the termination, cancellation, expiration or other conclusion of the Agreement, Vendor shall return the Data to FIU in an agreed upon format, unless FIU

requests in writing that such data be destroyed. This provision shall also apply to all Data that is in the possession of subcontractors or agents of Vendor. Such destruction shall be accomplished by "purging" or "physical destruction" in accordance with commercially reasonable standards for the type of data being destroyed (e.g., Guidelines for Media Sanitization, NIST SP 800-88). Vendor shall certify in writing to FIU that such return or destruction has been completed.

8. **Breach.** For purposes of this article, the term, "Breach," has the meaning given to it under the applicable Florida (F.S. 501.171) or federal law. Immediately upon discovery of a confirmed or suspected Breach, Vendor shall report both orally and in writing to FIU. In no event shall the report be made more than two (2) business days after Vendor knows or reasonably suspects a Breach has or may have occurred. In the event of a suspected Breach, Vendor shall keep FIU informed regularly of the progress of its investigation until the uncertainty is resolved. Vendor's report shall identify: (i) The nature of the unauthorized access, use or disclosure, (ii) The Data accessed, used or disclosed, (iii) The person(s) who accessed, used and disclosed and/or received Data (if known), (iv) What Vendor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and (v) What corrective action Vendor has taken or will take to prevent future unauthorized access, use or disclosure. Vendor shall provide such other information, including a written report, as reasonably requested by FIU. In the event of a Breach, Vendor will: (1) immediately preserve any potential forensic evidence relating to the breach; (2) promptly (within 2 business days) designate a contact person to whom FIU will direct inquiries, and who will communicate Vendor responses to FIU inquiries; (3) as rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore FIU service(s) as directed by FIU, and undertake appropriate response activities; (4) provide status reports to FIU on Breach response activities, either on a daily basis or a frequency approved by FIU; (5) coordinate all media, law enforcement, or other Breach notifications with FIU in advance of such notification(s), unless expressly prohibited by law; (6) take all reasonable efforts to assist and cooperate with FIU in its Breach response efforts; and (7) ensure that knowledgeable Vendor staff are available on short notice, if needed, to participate in FIU-initiated meetings and/or conference calls regarding the Breach. In the event of a Breach by Vendor or its staff, Vendor agrees to promptly reimburse all costs to FIU arising from such Breach, including but not limited to costs of notification of individuals, establishing and operating call center(s), credit monitoring and/or identity restoration services, time of FIU personnel responding to Breach, civil or criminal penalties levied against FIU, attorney's fees, court costs, etc. Any Breach may be grounds for immediate termination of this Agreement by FIU.

9. **Assistance in Proceedings.** Vendor shall make itself and any employees, subcontractors, or agents assisting Vendor in the performance of its obligations under the Agreement available to FIU at no cost to FIU to testify as witnesses in the event of an unauthorized disclosure caused by Vendor that results in litigation or administrative proceedings against FIU, its directors, officers, agents or employees based upon a claimed violation of laws relating to security, privacy or arising out of this agreement.

10. **Recovery.** Vendor shall maintain an industry standard disaster recovery program to reduce in potential effect of outages because of supporting data center outages. Any backup site used to store Data will include the same information security and privacy controls as the primary data center(s).

By signing below, Vendor's duly authorized representative agrees to incorporate this Addendum into the Agreement, and hereby executes this Addendum as of the date set forth below.

VENDOR: _____
By: _____
Name: _____
Title: _____
Date: _____