

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

**2. Payment.** Vendor shall submit bills for compensation for goods, services and/or expenses in detail sufficient for a pre-and post-audit; invoice requirements are available on FIU’s Office of the Controller’s Payment Services [website](#). FIU shall make payment in accordance with [FIU-2202 – Prompt Payment](#). If FIU does not issue payment within forty (40) days of receipt of a proper invoice, FIU may pay Vendor an interest penalty at the rate established pursuant to § 55.03(1), F.S., if the interest exceeds one dollar. Vendors experiencing payment problems may contact Accounts Payable at (305) 348-3889. FIU’s performance and obligation to pay is contingent upon the legislature’s annual appropriation; FIU will give notice to Vendor of the non-availability of funds when FIU has knowledge thereof. FIU will be responsible for paying only for any goods/services it receives; Vendor must refund any payment for goods/services that are unused upon the termination of the Agreement. FIU is a tax immune sovereign and exempt from the payment of sales, use or excise taxes. Vendor is responsible for and shall pay any taxes due under the Agreement. FIU may require Vendor to accept payments via FIU’s EFT/ACH payment process. If Vendor is making any payment to FIU, Vendor shall pay timely and not offset any amounts.

**3. Relationship of the Parties.** Each of the parties is an independent contractor and nothing in the Agreement shall designate any of the employees or agents of one party as employees or agents of the other. Vendor represents and warrants that it is not on the Convicted Vendor List (see § 287.133, F.S.). Vendor hereby assumes all risks attributable to the willful or negligent acts or omissions of Vendor and its officers, employees, agents and subcontractors or persons otherwise acting at the instance of Vendor, in furtherance of fulfilling Vendor’s obligations.

**4. FIU’s Information.** Vendor acknowledges and agrees that: (a) all documents, data, studies, materials, information, or other intellectual property furnished to Vendor by FIU or FIU’s affiliates in connection with the Agreement, and (b) all reports, studies, plans, deliverables, strategies, materials and other documents and information developed or prepared for FIU in connection with the Agreement, or which reflect any of the documents, studies, materials information, or other intellectual property furnished to Vendor by FIU (collectively, (a) and (b) are referred to as the “Information”) are and shall remain at all times confidential, proprietary, and the sole property of FIU. FIU shall retain all rights, title and interest in the Information. Vendor agrees that it shall not use the Information and will not share it with its employees, except as necessary to Vendor’s performance under the Agreement. Vendor shall not disclose the Information to third parties unless it obtains FIU’s written consent to such disclosure. In the event Vendor is required by subpoena, law or other judicial or administrative process to disclose the Information, Vendor shall (i) provide FIU with prompt notice thereof; (ii) consult with FIU on taking steps to resist or narrow such disclosure; (iii) furnish only that portion of the Information that is responsive to the request; (iv) comply with the requirements of all Privacy Laws (defined below); and (v) reasonably cooperate with FIU in any attempt that FIU may make to obtain an order or other reliable assurance that confidential treatment will be accorded. Upon termination of the Agreement or upon request by FIU, Vendor shall promptly return the Information.

**5. Public Records.** FIU is subject to Chapter 119 of the Florida Statutes, commonly known as the Florida Public Records Law. The Agreement, this Addendum, and any related documents and/or correspondence shall also become a public record subject to the Public Records Law, regardless of any confidentiality provision outlined in the Agreement. FIU may respond to public records requests without providing Vendor any notice. FIU may unilaterally cancel the Agreement for Vendor’s refusal to allow public access to all public records that were made or received in conjunction with the Agreement. This provision shall survive termination or expiration of the Agreement. Additionally, Vendor shall comply with all applicable requirements of the Public Records Laws, particularly if Vendor is a “Contractor” as defined under § 119.0701, F.S.: (a) Keep and maintain public records required by FIU to perform the service; (b) Upon request by FIU, provide the public with access to public records on the same terms and conditions that FIU would provide the records and at a cost that does not exceed the cost provided in the public records laws, or as otherwise provided by law; (c) Ensure that public records that are exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) Meet all requirements for retaining public records and transfer, at no cost, to FIU all public records in possession of Vendor upon termination of the Agreement (or upon request by FIU) and destroy any duplicate public records that are exempt from public records disclosure requirements. All records stored electronically must be provided to

FIU in a format that is compatible with FIU’s information technology systems. **IF VENDOR HAS QUESTIONS REGARDING THE APPLICABILITY OF CHAPTER 119 TO VENDOR’S DUTY TO PROVIDE PUBLIC RECORDS, VENDOR MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 348-1377, [recordsmanagement@fiu.edu](mailto:recordsmanagement@fiu.edu), BY MAIL AT 11200 S.W. 8<sup>th</sup> ST., GL 460, MIAMI, FLORIDA 33199.**

**6. Intellectual Property.** Vendor represents and warrants that its hardware, software and any related systems, documentation and/or services related thereto (collectively, the “IP”) furnished by Vendor to FIU will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. Vendor will, at its expense, defend any suit brought against FIU and will indemnify FIU against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against FIU by settlement or final judgment of a court that is based on a claim that Vendor’s IP infringes an intellectual property right of a third party. FIU will provide reasonable cooperation in the defense of the suit at Vendor’s expense. Such defense and indemnity shall survive termination or expiration

of the Agreement and Vendor’s liability for the above is not limited by any limitation of liability clauses in the Agreement. In the event an injunction or order shall be obtained against FIU for the use of Vendor’s IP or if in Vendor’s opinion the IP is likely to become the subject of a claim of infringement or violation of a copyright, trademark, trade secret, or other proprietary right of a third party, Vendor shall, at its expense: (a) Procure for FIU the right to continue using the IP; or (b) at no additional cost to FIU, replace or modify the IP so that it becomes non-infringing, but only if the modification or replacement does not adversely affect the specifications of the IP or its use by FIU. If neither (a) nor (b) above is practical, Vendor shall remove the IP from FIU and shall issue a refund for the IP to FIU, less reasonable depreciation. Thereafter, any license involved shall be canceled. FIU may distribute any information or service based upon, generated by, or involving the use of the IP as long as the IP is not distributed to individuals outside of FIU. FIU may create and retain a copy of the IP and related documentation for back-up and disaster recovery purposes, and for archival purposes for use after the termination and/or expiration of the Agreement.

**7. Indemnity.** Vendor will indemnify, defend and hold harmless FIU, the FIU Board of Trustees, the State of Florida, the Florida Board of Governors, and their officers, employees, and agents from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which may arise in any manner or are alleged to have arisen, from) the acts, omissions, negligence or misconduct of Vendor or its officers, employees, agents, representatives or subcontractors in connection with or related to (a) Vendor’s operations, activities, business and/or services or (b) Vendor’s occupancy or use of the FIU premises. FIU will provide reasonable cooperation in the defense of the suit at Vendor’s expense. Vendor’s indemnification obligations shall not be limited by any limitation of liability outlined in the Agreement. Such defense and indemnity shall survive termination or expiration of the Agreement. **Nothing in the Agreement shall be construed as a waiver of sovereign immunity nor as an indemnification of Vendor by FIU, and then such indemnification is limited to the express terms of §768.28, F.S.**

**8. Compliance.** In the performance of the Agreement, Vendor shall at its own expense, at all times during the term:

- a. **Permits:** have all applicable permits, licenses, consents, and approvals necessary to perform its obligations under the Agreement;
- b. **General:** comply with all applicable federal, state, local and FIU laws, rules, regulations, and ordinances and all other governmental requirements.
- c. **Section 889 Compliance Certification:** comply with § 889 of the McCain National Defense Authorization Act (prohibition against use of covered telecommunications equipment);
- d. **Privacy:** comply with any and all applicable state and federal laws and FIU policies and procedures governing the use and/or safe-keeping of confidential, highly sensitive, and/or personally identifiable or protected health information (as may be defined by state or federal law), including, but not limited to, the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act, the Federal Trade Commission’s Red Flags Rule (which implements Section 114 of the Fair and Accurate Credit Transactions Act of 2003), [FIU Policy 1110.032 – Preventing Identity Theft on Covered Accounts](#), and [FIU Procedure 1930.021 – Data Stewardship](#) (collectively, “Privacy Laws”). Vendor shall obtain in advance all necessary permissions and consents required in regards to its collection and/or receipt of any such information. In the event that FIU will share with or provide access to Vendor of any protected health information (“PHI”), as that term is or may be defined by state or federal law, FIU and Vendor shall, pursuant to [FIU Policy 1660.015](#), enter into a separate business associate agreement which will govern the use of the PHI (in lieu of this provision). Vendor agrees to include all such terms and conditions contained in any subcontractor or agency contracts providing services on behalf of Vendor;
- e. **Federal funds. If FIU has entered into an agreement with the United States of America, or any Department thereof, and the Agreement is in furtherance of the commitments and/or requirements of such federal agreement or funds, Vendor agrees to comply with the terms contained in FIU’s Federally Funded Projects Addendum, found at <https://generalcounsel.fiu.edu/contract-forms/>, herein incorporated by this reference;**
- f. **PCI-DSS:** as may be applicable, deliver all services in full compliance with the most recent version of the Payment Card Industry Data Security Standard (PCI-DSS) in effect at the time of service delivery. Vendor will treat all FIU provided infrastructure and resources as public and non-secure, regardless of measures FIU may choose to put in place. Vendor will also maintain all required qualifications and periodically furnish proof of ongoing compliance in the form of an Attestation of Compliance to demonstrate to FIU that Vendor is continuously operating in full compliance with PCI-DSS and is not relying on FIU for any aspect of that compliance. If Vendor loses any required certification or the certification lapses, Vendor shall immediately notify FIU, and FIU will have an option to terminate this contract and receive a refund for unrendered services; and
- g. **E-Verify:** All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Vendor certifies that it is registered with and uses the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the Vendor during the term of this Agreement. If Vendor enters into a contract with a subcontractor to perform work or provide services pursuant to this Agreement, Vendor shall likewise require the subcontractor to comply with the requirements of §448.095, Fla. Stat., and the subcontractor shall provide to Vendor an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Vendor shall maintain a copy of such affidavit for the duration of the contract. FIU may terminate this Agreement immediately upon notice to Vendor for any violation of this provision.

**9. General Provisions.**

- a. **Warranties.** Vendor, at a minimum, warrants that the IP, the goods, and/or the services to be provided by Vendor will be free of any material defects and will operate and conform to

FLORIDA INTERNATIONAL UNIVERSITY

- the specifications provided in all material aspects throughout the term of the Agreement. This warranty shall be in addition to any warranties provided in the Agreement.
- b. **Publicity.** Vendor shall not make any announcements relating to the Agreement, nor shall Vendor use FIU's name, trademarks, logos or marks, without the prior written approval from FIU's External Relations department in each instance.
- c. **Insurance.** FIU, as a public body corporate entity, warrants and represents that it is self-funded for liability insurance, with said protection being applicable to officers, employees, servants, and agents while acting within the scope of their employment by FIU. Any provision requiring FIU to provide or acquire insurance coverage other than such self-insurance shall not be effective. Vendor shall have and maintain the types and amounts of insurance that, at minimum, will cover Vendor's (or subcontractor's) exposure in performing the Agreement and name FIU as additional insured and be primary and non-contributory on Vendor's policies (except for workers' compensation & professional liability). All policies shall be in a form and with deductible limits reasonably satisfactory to FIU, with insurance companies reasonably approved by FIU and authorized to do business in the State of Florida. Certificates of all insurance shall be deposited with FIU prior to the date of the Agreement. All insurance policies and certificates shall contain a provision that it will not be cancelled without giving FIU thirty (30) days' written notice prior to the effective date of cancellation. Timely renewal certificates will be provided to FIU as coverage renews. Vendor, for and on behalf of itself and each of its insurers, hereby waives any and all rights of subrogation against FIU for any loss or damage arising from any cause covered by any insurance required to be carried under the Agreement by any other insurance actually carried by Vendor. Vendor shall provide copies of any insurance policies upon request by FIU. If the professional liability coverage is provided on a claims-made basis, then such insurance shall continue for three (3) years following the expiration or termination of the Agreement. The insurance shall have a retroactive date of placement by the effective date of the Agreement. If the coverage is canceled or non-renewed and not replaced with another similar claims-made policy form, the Vendor must purchase Extended Reporting ("Tail") coverage for a minimum of three (3) years following the expiration or termination of the Agreement.
- d. **Third Parties.** FIU is not liable for the acts of third parties or the consequences of the acts of third parties. There shall be no third party beneficiary to the Agreement.
- e. **Governing Law.** The Agreement is governed by the laws of the State of Florida without regards to any conflicts of law principles. Exclusive venue of any actions arising out of the Agreement shall be in Miami-Dade County, Florida. FIU is entitled to the benefits of sovereign immunity, including from taxation.
- f. **Travel Expenses.** If FIU is responsible for reimbursing Vendor for travel expenses pursuant to the Agreement, bills shall be subject to, and shall be submitted by Vendor in accordance with, § 112.061, F.S. and [FIU Policy 1110.060 – Travel: University Travel Expense Policy](#). FIU reserves the right not to pay travel expenses unless FIU approves such expenses in advance, in writing. FIU has the right to make travel arrangements for Vendor.
- g. **Lobbying.** Vendor is prohibited from using funds provided under the Agreement to lobby the Legislature or any official, officer, commission, board, authority, council, committee, or department of the executive branch or the judicial branch of state government.
- h. **Conflicts.** Vendor represents that it is aware of the requirements of Chapter 112, Florida Statutes and in compliance with the requirements thereof, and other laws and regulations concerning conflicts of interests in dealing with entities of the State of Florida. Vendor certifies that its directors and/or principal officers are not employed and/or affiliated with FIU unless a current Conflict of Interest (Report of Outside Activity/Employment) form has been completed, executed by such director or officer and approved in accordance with applicable University policies or rules. Violation of this section shall be grounds for termination of the Agreement.
- i. **Termination.** Upon giving at least thirty (30) days' written notice to Vendor, FIU may terminate the Agreement, at any time, with no further obligation to Vendor, other than to pay for any goods received or services rendered in compliance with the Agreement prior to the effective date of termination. FIU shall not be liable for any early termination charges.
- j. **Records.** Vendor agrees to keep and maintain, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its obligations and activities under the Agreement. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations under the Agreement. FIU or its authorized agent shall have the right to audit and inspect such records from time to time during the term of the Agreement, upon reasonable notice to Vendor.
- k. **Deletion.** Any term and/or condition in the Agreement on the following subject matters are hereby deleted in their entirety and declared null and void: (a) Grants of exclusivity by FIU to Vendor; (b) Restrictions on the hiring of Vendor's employees; (c) FIU's responsibility to pay intangible taxes, property taxes, or sales taxes; (d) FIU's tort liability; (e) Automatic renewals of the term of the Agreement; (f) Limitation of time to bring suit; (g) Limitation of Vendor's liability; (h) that FIU performs reporting functions and/or maintains certain types of operations (i) Granting Vendor any right to audit FIU; (j) Attorneys' or collection fees provisions; (k) Arbitration and mediation clauses; and (l) Indemnification of Vendor by FIU.
- l. **Modification/Assignment/Binding Effect/Waiver.** The Agreement may be modified, altered, or amended only by written agreement signed by both FIU and Vendor. Except for any subcontracting or delegation expressly agreed to in writing by both parties, Vendor shall not assign, transfer, delegate, subcontract, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any right or obligation under the Agreement, without the prior written consent of FIU, which shall not be unreasonably withheld. Any such unapproved assignment, subcontracting or transfer is void. No subcontracting or other delegation shall in any event relieve Vendor of any obligation or liability under the Agreement. The Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective permitted successors and assigns. No waiver by a party of any provision or breach of the Agreement shall be deemed to have been made unless the same is in writing,

and no waiver of any provision or breach of the Agreement shall be deemed a waiver of any other provisions or breach. A party's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any subsequent act.

**10. Secure Protection and Handling of Data Network Security:** To the extent applicable to Vendor's performance under the Agreement, Vendor agrees at all times to maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Vendor further agrees:

- a. **Network Standards:** to use at least those standards that FIU applies to its own network, pursuant to [FIU Policy 1910.010 - University Wireless Network Infrastructure](#);
- b. **Data Security:** to protect and maintain the security of FIU data with protection that is at least as good as or better than that maintained by FIU. These security measures include maintaining secure environments that are patched and up-to-date with all appropriate security updates pursuant to [FIU Policy 1930.020 - Information Technology Security](#);
- c. **Data Transmission:** that any and all transmission or exchange of system application data with FIU and/or any other parties expressly designated by FIU, shall take place via secure means, e.g., HTTPS or FTPS;
- d. **Data Storage:** that any and all FIU data will be stored, processed, and maintained solely on designated target servers and that no FIU data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless medium is in part of Vendor's designated backup and recovery process. Furthermore, all data shall be stored in the United States or other jurisdictions approved by FIU in writing and shall not be transferred to any other countries or jurisdictions without the prior written consent of FIU;
- e. **Domain Encryption:** that any websites hosted by Vendor on behalf of FIU shall be on an encrypted domain in compliance with the minimum security standards pursuant to [FIU Policy 175.150 - Digital Communications Standards Policy](#);
- f. **Data Encryption:** to store any FIU backup data as part of its designated backup and recovery process in encrypted form, using no less than 256 bit key;
- g. **Password Protection:** that any portable or laptop computer that resides at any FIU facility, has access to a FIU network, or stores any non-public FIU data is equipped with strong and secure password protection;
- h. **Data Re-Use:** that all data exchanged shall be used expressly and solely for the purpose enumerated in the Agreement. Data shall not be distributed, repurposed or shaped across other applications, environments, or business units of Vendor. Vendor further agrees that no FIU data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by FIU;
- i. **Data Destruction:** that, upon termination of the Agreement, it shall erase, destroy, and render unreadable all FIU data from all computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the termination of the Agreement or within seven (7) days of the request of an agent of FIU, whichever shall come first; and
- j. **Notification and Data Breaches:** 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 accordance therewith. In the event of a data breach of any Vendor's security obligations or other event requiring notification under applicable law (a "Notification Event"), Vendor agrees to assume responsibility for informing all such individuals in accordance with applicable laws and to indemnify, hold harmless and defend FIU against any claims, damages, or other harm related to such Notification Event.

**11. No counterparts; Signatures.** The Agreement may not be executed in counterparts. This Agreement may be signed electronically and such electronic signatures shall constitute an original for all purposes. The parties represent and warrant that any person signing the Agreement electronically has the authority to do so and that such electronic signature shall be sufficient to bind Vendor. This Agreement shall be considered signed if/when a party's signature is delivered by facsimile or e-mail transmission of a ".pdf" format date file, including via DocuSign. Such signature via DocuSign shall be treated in all respects as having the same force and effect as an original signature.

**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: \_\_\_\_\_