

FLORIDA INTERNATIONAL UNIVERSITY SUPPLEMENTAL ADDENDUM - SOFTWARE

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.** 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. Vendor shall submit bills for compensation for goods, services or expenses in sufficient detail sufficient for a pre-and post-audit; invoice requirements are available on FIU’s Office of the Controller’s Payment Services [website](#). 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’s performance and obligation to pay under the Agreement 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. Upon receipt of such notice by Vendor, Vendor is entitled to payment only for those services performed and accepted by FIU prior to the date such notice is received. FIU shall make payment in accordance with FIU Regulation [FIU-2202 – Prompt Payment](#). If FIU does not issue payment within 40 days of receipt of a proper invoice, FIU shall pay Vendor an interest penalty at the rate established pursuant to Florida Statutes §55.03(1) if the interest exceeds one dollar (\$1.00). Vendors experiencing payment problems may contact the Vendor Ombudsman at (305) 348-2101. FIU may require Vendor to accept payments via FIU’s EFT/ACH payment process.
3. **Relationship of the Parties.** Vendor is an independent contractor, and neither the Vendor nor the Vendor’s employees, agents, or other representatives shall be considered FIU’s employees or agents. The Vendor shall not use FIU’s name, trademarks, logos, or marks without FIU’s prior written approval in each instance. The Vendor represents and warrants that it is not on the Convicted Vendor List (*see Fla. Stat. § 287.133(2)(a)*). Each party hereby assumes all risks attributable to the willful or negligent acts or omissions of that party and the officers, employees, and agents thereof. The Vendor also assumes such risk with respect to the willful or negligent acts or omissions of the Vendor’s subcontractors or persons otherwise acting or engaged to act at the instance of the Vendor in furtherance of the Vendor fulfilling the Vendor’s obligations under the Agreement. **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, 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 reference.**
4. **FIU’s Information.** The Vendor acknowledges and agrees that: (a) all documents, studies, materials, information, or other intellectual property furnished to the 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 the Vendor by FIU (the materials described in (a) and (b) are collectively referred to as the “Information”) are and shall remain at all times confidential, proprietary, and the sole property of FIU. The Vendor agrees that it shall not use the Information and will not share the Information with its employees, except as necessary to the Vendor’s performance under the Agreement. The Vendor shall not disclose Information to third parties unless it obtains FIU’s written consent to such disclosure. In the event the Vendor required by subpoena or other judicial or administrative process or by law to disclose such records, the Vendor shall (i) provide FIU with prompt notice thereof; (ii) consult with FIU on the advisability of 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 the records. FIU shall retain all rights, title and interest in any Information supplied by FIU hereunder. Upon termination of the Agreement or upon request by FIU, the Vendor shall promptly return the Information to FIU.
5. **Public Records.** FIU is subject to applicable public records laws as provided by provisions of Florida Statutes Chapter 119, and Vendor must comply with such laws to the extent applicable to Vendor. Without limitation of the foregoing, if Vendor is a “contractor” as defined under Section 119.0701, Florida Statutes, it shall comply with the following requirements: (a) Keep and maintain public records that ordinarily and necessarily would be required by FIU in order to perform the service; (b) 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 Chapter 119, Florida Statutes, 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 the 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. 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. FIU will respond to such public records requests without any duty to give the Vendor prior notice. However, in the event any of Vendor’s IP (defined below) or other information is exempt from disclosure pursuant to the Public Records laws AND is clearly marked as confidential, FIU will not disclose such IP or information to any third party to the extent permitted by Florida law, unless otherwise authorized in writing by the Vendor. **IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICABILITY OF CHAPTER 119 OF THE FLORIDA STATUTES TO THE VENDOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 348-1377, BY EMAIL AT recordsmanagement@fiu.edu, OR BY MAIL AT 11200 S.W. 8th ST., GL 460, MIAMI, FLORIDA 33199.**
6. **Intellectual Property.** Vendor represents and warrants that its 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 the use of the Vendor’s IP infringes an intellectual property right of a third party; provided that FIU notifies Vendor in writing of the suit or any claim of infringement within thirty (30) calendar days after receiving notice thereof, and further provided that Vendor is permitted to control the defense in any litigation or settlement of the suit. 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 the 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 the Vendor’s IP or if in the 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. Additionally, 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. **Indemnification.** The Vendor is responsible for its performance under the Agreement. The Vendor will indemnify and hold harmless, assume liability for and defend, the State of Florida, the Florida Board of Governors, FIU 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 or wrongful conduct of Vendor or Vendor’s officers, employees, agents, guests, patrons, licenses, invitees or subcontractors in connection with or related to their operations, activities, and/or occupancy or use of the FIU premises in performance of the Agreement. This provision shall survive termination or expiration of the Agreement.
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 governmental 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. **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 the terms 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 1930.020a](#) – Data Stewardship (collectively, “Privacy Laws”). Vendor shall obtain in advance all necessary permissions and consents required in regards to its collection/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 1610.020](#), 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 of such terms and conditions contained in any subcontractor or agency contracts providing services on behalf of Vendor; and
 - d. **PCI-DSS:** as may be applicable, deliver all services in full compliance with the most stringent Payment Card Industry Data Security Standard (PCI-DSS) standards in effect at the time of service delivery. Vendor will treat all FIU provided infrastructure and resources as public and non-compliant, 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 this lapses, Vendor shall immediately notify FIU, and FIU will have an option to terminate this contract and receive a refund for unrendered services.

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9. General Provisions.

- a. Warranties. Vendor, at a minimum, warrants that the IP will be free of any material defects and will operate and confirm to the specifications provided in the documentation in all material aspects throughout the term of the Agreement. This shall be in addition to any warranties provided in the Agreement.
b. 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. Vendor shall have and maintain the types and amounts of insurance that, at minimum, will cover the Vendor's (or subcontractor's) exposure in performing the Agreement and at FIU's request, name FIU as additional insured on the Vendor's policies. 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, and written as primary coverage (except for professional liability). 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. The 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 the Vendor. Vendor shall provide copies of any insurance policies upon request by FIU.
c. FIU's Indemnity. Nothing in the Agreement shall be construed as an indemnification of the Vendor by FIU, or as a waiver of sovereign immunity pursuant to Florida Statutes §768.28.
d. Third Parties. FIU is not liable for the acts of third parties or the consequences of the acts of third parties.
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 the courts in Miami-Dade County, Florida.
f. Travel Expenses. If FIU is specifically responsible for reimbursing Vendor for travel expenses pursuant to the Agreement, such expenses shall only be paid to the extent permitted by § 112.061, F.S., and FIU Policy 1110.060 - Travel: University Travel Expense Policy.
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. No Conflict of Interest. Vendor represents that it has no employee who has, or whose relative has, a relationship with FIU, in a manner that will violate the Code of Ethics for Public Officers and Employees, including, but not limited to Florida Statutes Section 112.313(3) and (7) and Florida Statutes 112.3185(6) thereof, by reason of the Vendor entering into the Agreement.
i. Modification/Assignment/Binding Effect/Waiver. The Agreement may be modified, altered, or amended only by written agreement signed by both FIU and the 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 consent may shall not be unreasonably withheld. Any such assignment, subcontracting or transfer is void. No subcontracting or other delegation shall in any event relieve Vendor of any obligation or liability of Vendor 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.
j. Termination. Upon giving at least thirty (30) calendar days' written notice to the Vendor, FIU may terminate the Agreement, at any time, with no further obligation to the 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 fees or charges.
k. Record-Keeping. Vendor agrees to retain all records relating to the Agreement during the term and for a period of three (3) years thereafter and to make those records available at all reasonable times for inspection and audit by FIU and/or the State of Florida Auditor General. In connection with an inspection or audit, the records shall be provided at FIU's Modesto A. Maidique Campus or other location designated by FIU upon reasonable notice to Vendor.
l. Deletion. Any term and/or condition in the Agreement on the following subject matters are hereby deleted and declared null and void: (a) Grants of exclusivity by FIU to the Vendor; (b) Restrictions on the hiring of the Vendor's employees; (c) FIU's responsibility to pay taxes; (d) FIU's tort liability; (e) Automatic renewals of the term of Agreement; (f) A payment requirement contingent upon the happening of an event in the future which will increase the current pricing as set forth in the Agreement; (g) Limitation of time to bring suit; (h) Limitation of Vendor's liability; (i) That FIU performs reporting and/or reporting functions or maintains certain types of operations; (j) Granting Vendor any right to audit FIU; (k) Attorney's or collections fees provisions; (l) Arbitration and mediation clauses; and (m) indemnification of the Vendor by FIU.

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 to:

- 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 the Vendor's designated backup and recovery process;
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 128 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; facsimile signatures allowed. The Agreement may not be executed in counterparts. The Agreement, along with any and all exhibits, may be executed and delivered by facsimile signature by any of the parties to the other parties; to the extent permissible under Florida law, a facsimiles Signature shall have the same legal force and effect as an original signature and the receiving party may rely on the receipt of such document so executed and delivered by facsimile signature as if the original had been received.

The duly authorized representatives of the parties hereby execute this Supplemental Addendum.

THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES

VENDOR: _____

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

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