5. Use of Information. FIU may distribute any information or service based upon, generated by, or involving the use of the Software as long as the Software is not distributed to individuals outside of FIU. FIU may create and retain a copy of the Software and related records stored electronically must be provided to FIU in a format that is compatible with the information technology systems of the University. FIU will respond to such public records request without any duty to give the Vendor prior notice. FIU may unilaterally cancel the Agreement for Vendor’s refusal to allow public access to the records in connection with or related to their operations, activities, and/or obligation to pay under the Agreement is contingent upon the legislature’s annual appropriation. FIU will give notice to the Vendor of the non-availability of funds when FIU has knowledge thereof. Upon receipt of such notice by Vendor, FIU 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-220.II. If FIU determines in its sole discretion that the payment is due to FIU in advance of the date of execution of the Agreement, the Vendor shall, upon the request of the Vendor or at any time after the date of the Agreement, upon the date of execution of the Agreement, upon the date of the Agreement, provide to FIU a written notice of the amount of the payment. FIU will provide written notice of such determination to the Vendor within thirty (30) days of the date of the Agreement. The Vendor shall provide written notice of the amount of the payment to FIU within thirty (30) days of the date of the Agreement. The Vendor shall provide written notice of the amount of the payment to FIU within thirty (30) days of the date of the Agreement. The Vendor shall provide written notice of the amount of the payment to FIU within thirty (30) days of the date of the Agreement. The Vendor shall provide written notice of the amount of the payment to FIU within thirty (30) days of the date of the Agreement.

6. Intellectual Property Infringement. Vendor represents and warrants that all Software and all related systems and/or services related to its software (collectively, the “Software”) 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, in its defense, any suit brought against FIU and will indemnify FIU against an award of damages and costs (including reasonable attorney fees, court costs, and expert witness fees) with respect to any claim or allegations that the Software or its use by FIU infringes or otherwise violates any proprietary 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 Software or its use by FIU in any court or of any right or interest that the Software or its use by FIU infringes or otherwise violates any proprietary right of a third party, Vendor shall, at its expense: (a) Procure for FIU the right to continue using the Software; or (b) at no additional cost to FIU, replace or modify the Software so that it becomes non-infringing, but only if the modification or replacement does not adversely affect the specifications of the Software or its use by FIU. If neither (a) nor (b) above is practical, Vendor shall remove the Software from FIU and shall issue a credit for the Software to FIU, less reasonable depreciation. Thereafter, any license involved shall be considered canceled.

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 employees, agents, partners, licensees, invitees or subcontractors in connection with or related to their operations, activities, and/or occupancy of the FIU premises in connection with the Agreement. This provision shall survive termination or expiration of the Agreement.

8. Use of Information. FIU may distribute any information or service based upon, generated by, or involving the use of the Software as long as the Software is not distributed to individuals outside of FIU. The Software may be distributed if it is permitted by the Agreement. FIU may create and retain a copy of the Software 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.


a. Ownership of Work. FIU shall retain all rights, title and interest in any content, data or other intellectual property owned or supplied by FIU hereunder.

b. Compliance with Laws. In the performance of the Agreement, Contractor shall, at its own expense, at all times during the Term, comply with all applicable federal, state, and local laws, ordinances, and regulations and all other governmental agencies that have and will at all times during the Term maintain all applicable governmental permits, licenses, consents, and approvals necessary to perform its obligations under the Agreement.

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. 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 any such insurance. All policies shall contain deductible limits reasonable 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 renewals. 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 of 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 or information furnished to the Vendor by FIU (the materials described in (a) and (b) are collectively referred to as the “Information”) 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 perform the Agreement, and that the Vendor will not disclose to any third party such information except as specifically permitted or required by applicable laws, and that such disclosure shall be only to the vendors, subcontractors, or persons otherwise acting or engaged to act at the instance of the Vendor in connection with the Agreement and shall be only to the extent necessary for the performance of the work required in such federal agreement. Contractor shall comply with the terms contained in FIU’s Federally Funded Projects Addendum found at https://generalcounsel.fiu.edu, herein incorporated by reference.

4. Confidential Information. The Vendor acknowledges and agrees that (a) all documents, 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 or information 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 perform the Agreement, and that the Vendor will not disclose to any third party such information except as specifically permitted or required by applicable laws, and that such disclosure shall be only to the vendors, subcontractors, or persons otherwise acting or engaged to act at the instance of the Vendor in connection with the Agreement and shall be only to the extent necessary for the performance of the work required in such federal agreement. Contractor shall comply with the terms contained in FIU’s Federally Funded Projects Addendum found at https://generalcounsel.fiu.edu, herein incorporated by reference.

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 its invoices to FIU in accordance with the terms of the Agreement. FIU's performance and obligation to pay under the Agreement is contingent upon the legislature’s annual appropriation. FIU will notify the 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-220.II. If FIU determines in its sole discretion that the payment is due to FIU in advance of the date of execution of the Agreement, the Vendor shall, upon the request of the Vendor or at any time after the date of the Agreement, provide to FIU a written notice of the amount of the payment. FIU will provide written notice of such determination to the Vendor within thirty (30) days of the date of the Agreement. The Vendor shall provide written notice of the amount of the payment to FIU within thirty (30) days of the date of the Agreement.

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. 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 any and all risk of personal injury and property damage attributable to the other party’s negligence. The Vendor shall defend and indemnify FIU from and against any and all claims, suits or offsets or losses caused by or resulting from or caused by any act or omission of the Vendor or by the negligence of the Vendor's subcontractors or persons otherwise acting or engaged to act at the instance of the Vendor in connection with the Agreement and fulfill 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 entered into with the Contractor to further the performance of the work required in such federal agreement, Contractor shall comply with the terms contained in FIU’s Federally Funded Projects Addendum found at https://generalcounsel.fiu.edu, herein incorporated by reference.

7. Incorporation by Reference. The Florida International University Board of Trustees (“FIU”) and Contractor hereby incorporate this Supplemental Addendum - Software (“Addendum”) into the Agreement (“Agreement”). If this Addendum conflicts with the remainder of the Agreement terms, this Addendum shall control.

FLORIDA INTERNATIONAL UNIVERSITY SUPPLEMENTAL ADDENDUM - SOFTWARE

OGC Supplemental Addendum - Software- Revised January 2015
The Florida International University Supplemental Addendum - Software

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.

d. **Sovereign Immunity.** Nothing in the Agreement shall be construed as an indemnification of the Vendor by FIU or as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28.

e. **Third Parties.** FIU is not liable for the acts of third parties or the consequences of the acts of third parties.

f. **Governing Law.** The Agreement is governed by the laws of the State of Florida without regard 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.

g. **Travel Expenses.** Vendor shall not charge FIU for any travel expenses, meals, and lodging unless otherwise provided in the Agreement and FIU's prior written approval of the expenses has been obtained. Under such circumstances, Vendor is authorized to incur the agreed-to travel expenses which will be payable by FIU, but only to the extent permitted in Florida Statutes §112.061 and the FIU Policy 1110.060 Travel: University Travel Expense Policy, which is available at [http://policies.fiu.edu/files/548.pdf](http://policies.fiu.edu/files/548.pdf). Vendor is responsible for any expenses in excess of these prescribed amounts.

h. **Lobbying.** Vendor is prohibited from using funds provided under the Agreement for the purpose of lobbying the Legislature or any official, officer, commission, board, authority, council, committee, or department of the executive branch or the judicial branch of state government.

i. **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.

j. **Modification/Assignment/Binding Effect/Waiver.** The Agreement may be modified, amended, or supplemented 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 not be unreasonably withheld. Any such assignment, subcontracting or transfer is void. No subcontracting or other delegation shall exist 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 breaches. 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.

k. **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.

l. **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.

m. **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 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.** Use those standards that FIU applies to its own network, as found at [http://policies.fiu.edu/files/589.pdf](http://policies.fiu.edu/files/589.pdf), as updated;

b. **Data Security.** Vendor agrees to protect and maintain the security of any 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 as designated (see [http://policies.fiu.edu/562.pdf](http://policies.fiu.edu/562.pdf), as updated);

c. **Data Transmission.** Vendor agrees 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.** Vendor agrees 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.** Vendor agrees that any websites hosted by Vendor on behalf of FIU shall be on an encrypted domain in compliance with the minimum security standards (see [http://policies.fiu.edu/files/755.pdf](http://policies.fiu.edu/files/755.pdf), as updated);

f. **Data Re-Use.** Vendor agrees 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;

g. **Password Protection.** Vendor agrees 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.** Vendor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in the Agreement. Data shall not be distributed, repurposed or shared 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; and

d. **Data Destruction.** Vendor agrees that, upon termination of the Agreement, it shall cease, 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.

j. **Notification and Data Breaches.** 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 accordance with. 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 Agreement; to the extent permissible under Florida law, a facsimile 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.