

UNCW IT SERVICES & SYSTEMS ADDENDUM

Vendor acknowledges that UNCW will disclose Personally Identifying Information (PII) to the Vendor during the performance of this Agreement, and/or the Agreement allows the Vendor access to PII. Vendor agrees to maintain strict confidentiality of PII, in accordance with the requirements and conditions set forth in this Addendum.

Vendor attests and warrants that any documentation submitted or supplied is accurate, complete, and is a comprehensive assessment of the requirements for which it is submitted. Vendor shall immediately notify the University of any errors, omissions, corrections, or material changes in the documentation and/or underlying information used to prepare the documentation. The University assumes no responsibility to verify the documentation.

1. **DEFINITIONS:**

- a) "Data" is information, formulae, algorithms, or other content that UNCW, UNCW's employees, agents and end users provide, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which UNCW's Data may be ascertainable. All data provided or derived is the property of UNCW and is to be confidential and kept private unless otherwise noted by mutual agreement.
- b) "Regulated data" means Personally Identifiable Information (PII) and any other Data that is protected or regulated by state or federal law.
- c) "Services" are the duties and tasks undertaken by the Vendor to fulfill the requirements and specifications of this Agreement.
- d) "Support" includes provision of ongoing service updates, fixes, training, consulting, and maintenance for Vendor supplied services.
- e) "Personally Identifiable Information", or "PII", is any information that can be used to distinguish one person from another and can be used for de-anonymizing anonymous data. Personally Identifiable Information shall include "Education Records" and "Personnel Information" as those terms are further defined herein.

2) **ACCESS AND USE OF IT SERVICES:**

- a) Vendor grants UNCW a personal non-transferable and non-exclusive right to use and access, all contracted Services. UNCW may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. UNCW is authorized to access UNCW Data and any data provided as part of the contracted Services. Services may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. UNCW shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. All Services and information designated as "confidential" or "proprietary", and all Data, shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. § 132-1, *et. seq.*
- b) UNCW's right to license the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, unless otherwise agreed to by the parties. Vendor has a limited, non-exclusive license to access and use UNCW Data as provided to Vendor, but solely for providing the specified contracted Services.
- c) The technical and professional activities required for establishing, managing, and maintaining the Services and environment are the responsibility of the Vendor.
- d) Any additional agreements or terms derived by end user assent (e.g., "clickthrough") are null and void.
- e) All UNCW Data must remain within the legal jurisdiction of the United States unless the Data's disposition is otherwise explicitly designated by UNCW.
- f) The Vendor is ultimately responsible for providing the contracted Services under the specified provisions. The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services, but Vendor assumes all responsibility for third party activities in those regards. Vendor will not provide Data to any subcontractor or agent without UNCW's prior written consent, and until the subcontractor or agent agrees in writing to comply with these Terms and Conditions.

3) **MODIFICATION OF SERVICES:**

If Vendor modifies or replaces the Services provided to UNCW and other tenants, and if UNCW has paid all applicable Subscription Fees, as that term may be defined in Vendor documentation, UNCW shall be entitled to receive, at no additional charge, access to a newer version of the Services that supports substantially the same functionality as the then-accessible version of the Services. Newer versions of the Services containing substantially increased functionality may be made available to UNCW for an additional subscription fee. In the event of either of such modifications, the then-accessible version of the Services shall remain fully available to UNCW until the newer version is provided to UNCW and accepted. If a modification materially affects the functionality of the Services as used by UNCW, at its sole option, UNCW may defer such modification.

4) **TRANSITION PERIOD:**

- a) For a minimum of ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, Vendor shall assist UNCW, upon written request, in extracting and/or transitioning all Data in the format determined by UNCW ("Transition Period").
- b) The Transition Period and terms may be modified as specified by both parties in writing.
- c) During the Transition Period, Services access shall continue to be made available to UNCW without alteration.
- d) Vendor agrees to compensate UNCW for damages or losses UNCW incurs as a result of Vendor's failure to comply with this Transition Period section.
- e) Upon termination, and unless otherwise stated in an SLA, and after providing UNCW Data to UNCW as indicated above in this section with acknowledged receipt by UNCW in writing, the Vendor shall permanently destroy or render inaccessible all UNCW Data. The vendor shall provide written documentation confirming the destruction or inaccessibility of UNCW's Data.

5) **CONFIDENTIALITY:**

UNCW may maintain the confidentiality of certain types of information provided by Vendor described in N.C. Gen. Stat. § 132-1, *et seq.* Such information may include trade secrets defined by N.C. Gen. Stat. § 66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. § 132-1.2. Vendor may designate information, products, or Services or appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL.**" By so marking any page, or portion of a page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked "confidential" meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** UNCW agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. If an action is brought pursuant to N.C. Gen. Stat. § 132-9 to compel UNCW to disclose information marked "confidential," the Vendor agrees that it will intervene in the action through its counsel and participate in defending UNCW, including any public official(s) or public employee(s). The Vendor agrees that it shall hold UNCW and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against UNCW in the action. UNCW shall have the right, at its option and expense, to participate in the defense of the action through its counsel. UNCW shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

6) **SECURITY OF UNCW DATA:**

- a) All materials, including software, Data, information, and documentation provided by UNCW to the Vendor (UNCW Data) during the performance or provision of Services hereunder are the property of UNCW and must be kept secure, returned to UNCW, and afterwards destroyed. The Vendor will protect UNCW Data from disclosure, unauthorized modification, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to UNCW by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be provided to UNCW as part of the Services.
- b) The Vendor shall protect the confidentiality and integrity of all information, Data, instruments, studies, reports, records and other materials provided to it by UNCW or maintained or created in accordance with provided services. No such information, Data, instruments, studies, reports, records, other materials, or derivatives of such, in the possession of Vendor, shall be disclosed in any form without the prior written consent from UNCW Purchasing.
- c) The Vendor is responsible for the protection of UNCW Data, including but not limited to Personal Identifying Information (PII). Vendor acknowledges its responsibility for securing any UNCW Data used in connection with the provision of the Services. Vendor warrants, it shall provide reasonable care and efforts to protect private and Regulated Data, detect fraudulent activity involving such Data, and promptly notify UNCW Purchasing of any unauthorized access, use, or Data loss. Specific terms and conditions for Personally Identifiable Information are included herein.
- d) Vendor will provide and maintain secure backups of UNCW Data on an acceptable periodic schedule.
- e) Vendor shall implement and maintain appropriate access controls for its online system providing the Services, as well as all appropriate administrative, physical, technical, and procedural safeguards at all times during the term of this Agreement to secure the Data and the Services from loss, corruption, unauthorized disclosure.
- f) Vendor will apply the principle of "least privilege" for employee and contractor access in providing the contracted services.
- g) Vendor must maintain logs of all changes in user privilege and any access to data.

- h) Upon request Vendor must provide UNCW with the most recent report, audit, or certification, performed by a third party, that relates to the security, availability, processing integrity, confidentiality, and privacy of the operations and systems of the Vendor.
- i) UNCW may, at any time, make a local copy of all UNCW data.
- j) Vendor shall certify to UNCW:
 - i) They have and adhere to a periodically tested and annually reviewed disaster recovery plan.
 - ii) That the Services will comply with the following where applicable:
 - (1) Privacy provisions of the Federal Privacy Act of 1974;
 - (2) The Family Educational Rights and Privacy Act (FERPA) if records include student information.
 - (3) The Health Insurance Portability and Accountability Act if records include any health-based information.
 - (4) The Americans with Disabilities Act and Section 504 of the Rehabilitation Act requirements for access to and use of their provided services.
 - (5) The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. § 75-65 and -66);
 - (6) The North Carolina Public Records Act, N.C.G.S. Chapter 132; and
 - (7) Applicable industry standards and guidelines, including but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Computing Guidelines.
- k) Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any UNCW Data or UNCW confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon UNCW Data or UNCW confidential information described in Section 1 above, whether or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying. Notwithstanding the above, Vendor shall, within one business day of discovery, report to UNCW any use or disclosure of PII not authorized by these Terms and Conditions or in writing by UNCW. Vendor's report shall identify:
 - (i) the nature of the unauthorized use or disclosure;
 - (ii) the PII 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.

UNCW, in its sole discretion, shall have the right to require Vendor to submit to a plan of monitoring and reporting; provide Vendor with a fifteen (15) day period to cure the breach; or terminate the Agreement immediately if cure is not possible, subject to Vendor's obligations upon termination described in this paragraph 6. Vendor shall provide any such other information relevant to UNCW's breach investigation and mitigation, including a written report, as reasonably requested by UNCW.

- l) Breach Notification. In the event Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall, at its own expense,
 - (i) immediately notify UNCW Purchasing of such Security Breach and perform a root cause analysis thereon,
 - (ii) investigate such Security Breach,
 - (iii) provide a remediation plan, acceptable to UNCW, to address the Security Breach and prevent any further incidents,
 - (iv) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and
 - (v) cooperate with UNCW, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach.

UNCW shall make the final decision on notifying UNCW's persons, entities, employees, service providers and/or the general public of such Security Breach, and the implementation of the remediation plan. If a

notification to a customer is required under any Law or pursuant to any of UNCW's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by UNCW) shall be considered legally required. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Vendor improperly disclosed PII obtained from UNCW's Education Records, UNCW may not allow the Vendor access to Education Records for at least five (5) years.

- m) Notification Related Costs. Vendor shall reimburse UNCW for all Notification Related Costs incurred by UNCW arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include UNCW's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (1) Preparation and mailing or other transmission of legally required notifications; (2) Preparation and mailing or other transmission of such other communications to customers, agents or others as UNCW deems reasonably appropriate; (3) Establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) Public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with UNCW's investigation of and response to such event; and (6) Costs for credit reporting services that are associated with legally required notifications or are advisable, in UNCW's opinion, under the circumstances. In the event that Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall immediately notify UNCW Purchasing of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.
- n) In the event of disaster or catastrophic failure that results in significant UNCW Data loss or extended loss of access to Data or Services, Vendor shall notify UNCW Purchasing by the fastest means available and also in writing, with additional notification provided to the UNCW Chief Information Officer or designee. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform UNCW of:
 - i) The scale and quantity of UNCW Data loss;
 - ii) What Vendor has done or will do to recover the UNCW Data from backups and mitigate any deleterious effect of UNCW Data and Services loss; and
 - iii) What corrective action Vendor has taken or will take to prevent future UNCW Data and Services loss.
 - iv) If Vendor fails to respond immediately and remedy the failure, UNCW may exercise its options for assessing damages or other remedies.

Vendor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with UNCW. UNCW and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with UNCW, its agents and law enforcement.

- o) In the event of termination of this contract, cessation of business by the Vendor or other event preventing Vendor from continuing to provide the Services, Vendor shall not withhold UNCW Data or any other UNCW confidential information or refuse for any reason, to promptly return to UNCW Data and any other UNCW confidential information (including copies thereof) if requested to do so on such media as reasonably requested by UNCW, even if UNCW is then or is alleged to be in breach of the Agreement as long as UNCW has paid any undisputed sums. As a part of Vendor's obligation to provide UNCW Data pursuant to this Paragraph 10)o), Vendor will also provide UNCW any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for UNCW to use, translate, interpret, extract and convert UNCW Data.

7) CONFIDENTIALITY OF EDUCATION RECORDS AND PERSONNEL INFORMATION

a) Education Records

- i) **Definition: Education Records** shall have the meaning prescribed to it in 34 CFR § 99.3, and includes paper and electronic student education record information supplied by UNCW, as well as any data provided by UNCW's students to the Vendor, excluding any information that is designated as "directory information" in UNCW Policy 04.150 Student Records and Family Educational Rights and Privacy Act (FERPA).
- ii) **Protection of Education Records:** Vendor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in the Family Educational Rights and Privacy Act (34 CFR § 99.33(a)(2)) and with the terms set forth below. 34 CFR § 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from the institution may use the information, but only for the purposes for which the disclosure was made.
- iii) **School Official Designation:** For purposes of this Agreement and receipt of Education Records, Vendor is a school official with a legitimate educational interest as defined in 34 CFR § 99.31(a)(1)(i)(B).

b) Personnel Information

- i) **Definition: *Personnel Information*** shall mean staff and faculty identification numbers beginning with "850," and, to the extent applicable, confidential information contained in an employee's personnel file as provided in N.C.G.S. §§ 126-22 *et seq.*
 - ii) **Vendor Designation:** To the extent N.C.G.S. § 132-6 applies, Vendor acknowledges that it is not a custodian of public records under that statute.
- c) **Ownership and Use of Education and Personnel Records**
- i) **Property of UNCW:** Education Records and Personnel Information shall remain the sole property of UNCW. Vendor expressly acknowledges and agrees that Vendor has no property right or interest whatsoever in any such data.
 - ii) **Prohibition on Unauthorized Use or Disclosure of Education Records:** Vendor agrees to hold Education Records and Personnel Information in strict confidence. Vendor shall not use or disclose Education Records and Personnel Information received from or on behalf of UNCW except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by UNCW. Vendor agrees not to use Education Records and Personnel Information for any purpose other than the purpose for which the disclosure was made. In the event that Vendor receives a request for Education Records and Personnel Information by subpoena or other legal process or from a court, governmental authority, accrediting agency, or other third party, Vendor shall give prompt written notice to UNCW.

8) **PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS (PCI DSS) COMPLIANCE:**

In the event Vendor may have access to credit or debit card information and/or may affect the security of a credit or debit card transaction, Vendor is required to maintain PCI compliance. Vendor will provide documentation of PCI compliance per the PCI Security Standards Council (www.pcisecuritystandards.org) for itself and any of its third-party vendors, contractors, and service providers used for services provided to the university. Vendor will provide annually a PCI Security Standards Council Attestation of Compliance (AOC), preferably signed by a registered QSA firm, to the university.