

## **Texas A&M University– Texarkana Information Technology Addendum**

This Addendum amends and supplements the \_\_\_\_\_[insert agreement title] between Texas A&M University – Texarkana (“Customer”) and \_\_\_\_\_ (“Vendor”). The parties agree as follows:

1. Unless otherwise defined in this Addendum, each term used in this Addendum has the meaning ascribed to it in the Agreement.
2. Should any of the terms of this Addendum conflict with the terms of the Agreement, the terms of this Addendum will control.
3. “Protected Information” means employment records, medical records, education records, personal financial records and other personally identifying information, research data, classified government information, and other data that has been designated as private, protected, or confidential by law or by Customer, and which information 1) belongs to or is entrusted to the Customer or 2) Vendor collects from others (e.g. students) on Customer’s behalf. “Protected Information” does not include public records that by law must be made available to the general public. If Vendor is uncertain as to whether any data constitutes Protected Information, Vendor shall treat the data in question as Protected Information until a determination is made by Customer.
4. Vendor’s Use of Protected Information: Vendor will use Protected Information only for the purpose of fulfilling its duties under this Agreement and for Customer's benefit, and will not share such data with or disclose it to any third party without the prior written consent of the Customer or as otherwise required by law. Vendor will not use such data for Vendor's own benefit and, in particular, will not engage in "data mining" of Protected Information, except as specifically and expressly required by law or authorized in writing by Customer.
5. Vendor will provide access to Protected Information only to those Vendor employees and subcontractors who need such access to perform their obligations under this agreement. Vendor will ensure that employees who perform work under this Agreement have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this Agreement and have undergone all background screening and possess all qualifications required by the Customer.
6. FERPA: For purposes of the Family Educational Rights and Privacy Act (“FERPA”), Customer designates Vendor as a school official with a legitimate educational interest in any education records in Protected Information to the extent Vendor requires access to those records to fulfill its obligations under the Agreement.

7. Vendor's Protection of Protected Information: Vendor shall use the greater of the following when protecting Protected Information: 1) commercially reasonable care or 2) the care used by the Vendor in protecting their own information of a similar type.
8. Vendor shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Protected Information received from, or on behalf of Customer.
9. Vendor shall encrypt all Protected Information in transit and at rest.
10. Vendor shall store Protected Information only on devices located within the United States.
11. Return of Customer Information by Vendor: Upon termination of the Agreement, Vendor shall return all Customer Information to Customer within 30 days or, if return is not feasible, destroy all Customer Information within 30 days. At least 30 days before destruction of any Customer Information, Vendor shall provide Customer with written notice of Vendor's intent to destroy Customer Information. Within 7 days after destruction, Vendor shall confirm to Customer in writing the destruction of Customer Information.
12. If Customer reasonably determines in good faith that Vendor has materially breached any of its obligations under this Addendum or has violated FERPA, Customer, in its sole discretion, may require Vendor to submit to a plan of monitoring and reporting; provide Vendor with a 15-day period to cure the breach; or terminate the Agreement immediately. Before exercising any of these options, Customer shall provide written notice to Vendor describing the violation and the action it intends to take. Vendor acknowledges that if the Family Policy Compliance Office of the U.S. Department of Education determines that Vendor improperly disclosed personally identifiable information obtained from Customer's education records, Customer may not allow Vendor access to education records for at least five years.
13. Breach Notification: Vendor shall, within one day of discovery, report to Customer any use or disclosure of Protected Information not authorized by the Agreement or in writing by Customer. Vendor's report shall identify: (a) the nature of the unauthorized use or disclosure, (b) the Protected Information used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure, (d) what Vendor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action Vendor has taken or will take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, as reasonably requested by Customer.
14. Legal Notices: Except as otherwise expressly prohibited by law, Vendor will: 1) immediately notify Customer of any subpoena, warrants, or other legal orders, demands, or requests, received by Vendor seeking Protected Information; 2) consult with Customer regarding its response; 3) cooperate with Customer's reasonable

requests in connection with efforts by Customer to intervene and quash or modify the legal order, demand, or request; and; 4) upon Customer's request, provide Customer with a copy of Vendor's response.

15. If Customer receives a subpoena, warrant, or other legal order, demand or request seeking Protected Information maintained by the Vendor, Customer will promptly provide a copy to Vendor. Vendor will promptly supply Customer with copies of data required for Customer to respond, and will cooperate with Customer's reasonable requests in connection with its response.
16. Indemnification: Vendor shall defend and indemnify Customer from all claims, liabilities, damages, or judgments involving a third party, including Customer's costs and attorneys' fees, which arise as a result of Vendor's failure to meet or breach any of its obligations under this Addendum.
17. Vendor shall deliver all applicable services and products in reasonable compliance with accessibility standards (Web Content Accessibility Guidelines 2.0 Level AA) and requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code. If the Customer provides Vendor with a request to remediate a portion, or portions, of the vendor Services and products due to non-conformance with applicable accessibility standards: (1) Vendor shall use commercially reasonable efforts to perform all necessary remediation at no cost to the Customer; or 2) the Customer may terminate the Contract. Vendor agrees to provide a current Voluntary Product Accessibility Template (VPAT) during the term of the Contract within thirty (30) days of a written request from Customer.
18. Vendor shall comply with all Customer requirements regarding vendor access to Customer systems and networks.
19. Survival: The restrictions and obligations under this Addendum will survive expiration or termination of the Agreement.
20. Renewal Terms: If purchased, the term of Support Services shall not automatically renew for successive periods on the Expiry Date. Should CUSTOMER renew Support Services, the increase in Support Services fees shall be limited to three (3) percent for first and all subsequent renewals.
21. Payment Terms: Payment shall be made pursuant to Texas Government Code, Chapter 2251 Prompt Payment Act.
22. Travel: Reimbursement of expense under this Paragraph shall include reasonable charges incurred for travel (airfare, mileage, car rental, and/or train fare), lodging, and meals for trips on the Client's behalf. All travel expenses shall be procured at the lowest cost available, and payment for travel related expenses shall be in accordance with State of Texas Travel Guidelines. Anticipated travel must be pre-approved in writing by Customer.

23. Reimbursement for travel expenses shall include invoices and receipts evidencing out-of-pocket expenses incurred by Vendor related to services in this Agreement. Payment of Vendor's Fee and travel related expenses shall be made upon submittal and approval of the Payment Voucher(s) on State Funds, or the University's Invoice(s) on Non-State Funds that is (are) received. TAMUT shall process all invoices in compliance with State of Texas prompt payment laws and the regulations of the Texas Comptroller's Office. Anticipated travel expenses must be pre-approved in writing by the Customer.
24. Public Information: Vendor acknowledges that Customer may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
25. Force Majeure: Except with regard to payment obligations, neither Party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, internet or other telecommunication delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval or authorization of any government authority.
26. Dispute Resolution: The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Client and DM to attempt to resolve any claim for breach of contract made by DM that cannot be resolved in the ordinary course of business. DM shall submit written notice of a claim under this Chapter to the Director of Contracts & Property of Client, who shall examine Contractor's claim and any counterclaim, and negotiate with Contractor in an effort to resolve the claim.
27. Loss of Funding: Performance by Customer under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, then Customer will issue written notice to the Vendor which includes proof of the lack of appropriations, and Customer may terminate this Agreement without further duty or obligation hereunder. The Vendor acknowledges that appropriation of funds is beyond the control of Customer. Customer remains responsible for payment of all products and services it has implemented, used, or purchased through the time of termination, and Customer will not be refunded any pre-paid fees.
28. Records & Audits: The Vendor shall maintain adequate records to establish compliance with this Master Agreement until the later of a period of four {4} years after termination of this Agreement or until full, final and unappealable resolution of all audit or litigation issues that arise under this Master Agreement at no cost.
29. Audit Access: The Vendor shall grant reasonable access to all paper and electronic records, books, documents, accounting procedures, practices and any other items

relevant to the performance of this Master Agreement the auditors designated by TAMUCC, including auditors of the State Auditors' Office and of the United States.

30. Audit Logging:

1. Vendor shall:

- a. Ensure that the following system events are recorded to one or more audit logs in real time:
  - i. All logins (including standard user, admin user, and service accounts);
  - ii. Account administration: account create, delete, modify permissions, change password, etc.; and
  - iii. Supervisor/Administrator changes to system parameters including security settings and audit logging parameters.
- b. Ensure that each audit log event shall comprise at least the following information:
  - i. Date;
  - ii. Time, down to resolution of at least one second;
  - iii. IP and/or username;
  - iv. Activity description; and
  - v. Success or failure.
- c. Retain audit logs for at least one year.
- d. Make the audit logs available to the Customer via an automated process e.g. export from an admin dashboard, syslog, sftp, Splunk forwarder, etc.

31. Late Fees: Payment shall be made pursuant to Texas Government Code, Chapter 2251 Prompt Payment Act.

32. Taxes: TAMUT is tax exempt. A form reflecting this must accompany any agreement.

33. Effect of Termination: With respect to any such Agreement termination or expiration, each party: (a) will immediately cease any use of the other Party's Confidential Information, (b) will delete any of the other Party's Confidential Information from its computer storage or any other media to the extent commercially practicable; and (iii) will return to the other Party or, at the other Party's option, destroy, all copies of the other Party's Confidential Information.

34. Sunset: Should the Vendor (a) cease further development work for or "end of life" Initial Software, and (b) should the Vendor make commercially available any replacement product or products that contain substantially all of same functionality found in Initial Software ("Replacement Software"), then Customer, at Customer's sole discretion, shall be entitled to receive an equal quantity of licenses for each such Replacement Software as Customer had rights to the Initial Product at no additional license or Support Services charge, provided that CUSTOMER has purchased Support Services continuously from the commencement date of the license acquisition of the particular unit of Initial Software, until the time the Replacement Software is

offered to Customer hereunder. To the extent that Additional Software includes new and substantially different functionality not found in the Initial Software (where such functionality is not specified in the documentation supplied with the Initial Software or made available under the provisions of Support Services) and the Vendor elects and is able through code to prevent the use of only the new and substantially different functionality without in any way degrading the functionality found in the Initial Software, Customer acknowledges that Customer's right to use such Additional or Replacement Software shall be limited solely to the use of the functionality supplied in the Initial Software and, for the avoidance of doubt, nothing in the foregoing grants Customer a license to use such new and substantially different functionality unless the Vendor is unable through code to prevent the use of only the new and substantially different functionality found in the Initial Software without in any way degrading the functionality found in the Initial Software. Notwithstanding the foregoing, nothing herein shall entitle Customer to receive new Hardware System(s) without payment to the Vendor.

35. Material Function Removal: In the event Vendor removes a material function ("Function") found in any Software licensed by Vendor to Customer hereunder ("Initial Software") from a subsequent version or release of such Software, whether such removal occurs via Support Services purchased by Customer for the Initial Software or otherwise, and that Function appears in another product ("Additional Software") Vendor makes commercially available, then Customer, at Customer's sole discretion and without forfeiting rights to Initial Software, shall be entitled to receive an equal quantity of licenses for the Additional Software as CUSTOMER had rights to the Initial Software at no additional license or Support Services charge provided that has purchased Support Services continuously from the date of license acquisition of the particular unit of Initial Software, until the time Additional Software is offered to CUSTOMER hereunder.
36. Conflict of Interest. By executing this Agreement, Vendor and each person signing on behalf of Vendor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
37. Prohibition on Contracts with Companies Boycotting Israel. To the extent that Texas Government Code, Chapter 2270 applies to this Agreement, Vendor/Contractor certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. Vendor/Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
38. Certification Regarding Business with Certain Countries and Organizations. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Vendor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated if this certification is inaccurate.

39. This Amendment is effective as of the effective date of the Agreement.

[insert vendor name]

Texas A&M University – Texarkana

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_