

UNIVERSITY OF DELAWARE
STANDARD TERMS INCORPORATED INTO ALL PURCHASE ORDERS

1. DEFINITIONS

1.1. “**Agreement**” means a single integrated accord between the Parties evidenced by a Purchase Order and the Terms & Conditions, as well as any attachments or exhibits hereto. To the extent applicable, “Agreement” shall also include any Statements of Work between the Parties.

1.2. “**Merchandise**” means goods, products, materials or supplies.

1.3. “**Party**” means either University or Supplier, while “**Parties**” means both University and Supplier.

1.4. “**Purchase Order**” or “**PO**” means the document issued by University which defines the Services, Merchandise and associated fees.

1.5. “**University**” means the University of Delaware and any school, institute, unit or controlled affiliate thereof.

1.6. “**University Confidential/Proprietary Information**” means all non-public, confidential or proprietary information of University, including, but not limited to, trade secrets, plans, documents, records, data (including Personally Identifiable Information as defined in the Data Privacy and Security Addendum attached hereto and incorporated herein and made a part hereof), business operations information and financial information that is disclosed or becomes known to Supplier, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” or is generated by Supplier through its activities hereunder, including Services and deliverables.

1.7. “**Services**” means design, engineering, installation, testing, evaluation, training, maintenance, repair, management, consulting, data analysis or any other services necessary to fulfill Supplier’s obligations under this Agreement or any Statement of Work, including any deliverables resulting from said Services.

1.8. “**Statement of Work**” or “**SOW**” shall mean the specifications, qualities, nature, type, properties, amounts and other descriptions of and requirements for Merchandise or Services provided by Supplier.

1.8. “**Supplier**” means any seller furnishing Merchandise or Services to University.

1.9. “**Terms & Conditions**” means these University Procurement Terms and Conditions.

1.10. “**Work Product**” means all work product, including any deliverables, conceived, created, developed or reduced to practice, in whole or part, by Supplier either alone or in conjunction with any other person or entity, including University or its personnel, during the term of this Agreement, including without limitation, all “works of original authorship” and all content, inventions, improvements, enhancements, designs, ideas, code, software applications, formula, processes, techniques, discoveries or know-how, whether or not patentable or copyrightable.

2. APPLICABILITY

The Agreement shall prevail over any conflicting terms set forth by Supplier, unless University expressly agrees in writing to the alternate terms and conditions. The Agreement shall prevail over the Uniform Commercial Code (UCC) Article 2. Notwithstanding anything herein to the contrary, if a written contract signed by both Parties is presently in existence covering the sale of Merchandise or provision of Services covered hereby, or the Parties subsequently enter into such a written contract, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms & Conditions.

3. OFFER AND ACCEPTANCE

This Agreement expressly limits Supplier’s acceptance to the terms of the Agreement. Any term or condition in any offer, invoice, or other document issued by Supplier that modifies, adds to, or changes the Agreement is rejected and will not be part of the Agreement unless expressly agreed by University in writing, and signed by a duly authorized signatory of University. If an offer issued by Supplier is referenced in a PO, it is hereby included and made part of the PO only to the extent of specifying the nature of the Merchandise or Services ordered, the price thereof and delivery date, and then only to the extent that such terms are consistent with the Agreement. Supplier should not fulfill its obligations under the Agreement with University without a Purchase Order Number. By fulfilling a University Purchase Order, Supplier agrees to furnish the Merchandise or Services covered by the PO and to be bound by and to comply with the Agreement. The Agreement shall be deemed accepted if Supplier: (1) commences Services; (2) ships all or part of the Merchandise ordered in a PO; or (3) gives any other expression of acceptance of the Terms and Conditions hereof. University reserves the right to revoke the PO at any time before acceptance by Supplier.

4. DELIVERY; PERFORMANCE

4.1. Timely Delivery and Performance. Time is of the essence in Supplier's performance of the Agreement. University is relying upon the promised Merchandise delivery date and/or performance date for Services set forth in the Agreement. If Supplier fails to deliver or perform as and when promised, University, in its sole discretion, may terminate the Agreement, PO, or any part thereof, without prejudice to its other rights, return all or part of any shipment made, and charge Supplier with any loss or expense sustained as a result of such failure to deliver or perform as promised.

4.2. Delivery of Merchandise. Delivery of Merchandise required by the Agreement must be made in the quantities specified by University. Unless otherwise agreed upon in writing, all Merchandise under the Agreement shall be delivered to the address specified in the Purchase Order (the "**Delivery Point**"), during University' normal business hours, DDP (Incoterms 2010) or FOB Delivery Point, as applicable. Supplier shall pack all Merchandise for shipment according to University's instructions or, if there are no instructions, in a manner sufficient to ensure that the Merchandise is delivered in undamaged condition.

4.3. Title and Risk of Loss; Inspection. Title to, and risk of loss of, all Merchandise shall remain with Supplier until receipt by University, subject to University' right of inspection and rejection in the event of nonconformance. For a reasonable time after delivery and before acceptance, University shall have the right to inspect and test the Merchandise. University shall notify Supplier if the Merchandise does not conform to the Agreement. At its sole option, University may return to Supplier any rejected Merchandise. Such rejected goods shall remain at Supplier's risk until returned to Supplier at Supplier's expense. University may, in its sole discretion, demand that Supplier promptly repair or replace all nonconforming Merchandise at its sole expense. Payment for Merchandise by University prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that University may against Supplier.

4.4 Performance of Services. Supplier shall provide the Services to University as described in the PO and in accordance with the schedule, if any, set forth in the PO, and in accordance with the Agreement. University shall notify Supplier if the Services do not conform to the Agreement. University may, in its sole discretion, demand that Supplier promptly re-perform all nonconforming Services at its sole expense.

5. PAYMENT

5.1. Payment. University shall pay undisputed invoices within thirty (30) days of receipt of Supplier's invoice contingent upon University approval of the Supplier's registration profile. Receipt of a valid IRS W-8 (for non-US entities) or IRS W-9 form (for domestic entities) is required. Banking information may be verified by a third-party verification service. If any portion of the Merchandise or Services does not conform to the requirements of the Agreement, a corresponding portion of the price may be withheld by University until the nonconformity is corrected. No additional charges of any kind, including, but not limited to, charges for boxing, packing, transportation, insurance, tariffs, or container charges, will be allowed unless specifically agreed to in writing by University. Invoices must be sent directly to University Accounts Payable at accountspayable@udel.edu with the Purchase Order number clearly identified on the invoice. Invoices submitted without a valid University PO number will not be processed.

5.2. Taxes. University asserts it is exempt from all federal, state and local taxes and shall provide, upon request, a certificate documenting its tax-exempt status. If it is determined that University is not exempt from such taxes, any sales or use tax imposed on University will be University's sole liability. Supplier shall assume and pay (i) all other taxes, including, but not limited to, any income, franchise, single business or similar taxes levied against Supplier upon or measured by Supplier's gross income, net income, net worth or capital stock, and (ii) interest or penalties resulting from any failure by Supplier to file any returns in a timely manner or to remit the proper amount of taxes or otherwise resulting from Supplier's acts or omissions.

5.3. Royalties and Other Fees. Unless agreed upon by the Parties in writing, any fees, such as royalties (e.g., BMI, ASCAP, SESAC) or union dues, which may be required in connection with or as a result of the Agreement, are the sole responsibility of Supplier.

6. TERMINATION

6.1. Termination for Convenience. University may terminate the Agreement in whole or in part at any time without cause upon at least thirty (30) days written notice to Supplier. If this Agreement is a subcontract (with University being the contractor to another party, and Supplier being University's subcontractor), then University may immediately terminate this Agreement upon written notice to Supplier if the prime contract is terminated for any reason. If University terminates this Agreement without cause, University will promptly pay Supplier for its Services performed and for Merchandise delivered and accepted in accordance with the terms of this Agreement through the effective date of termination. Such payment by University shall be Supplier's sole and exclusive remedy in connection with such termination.

6.2. Termination for Cause. Either Party may terminate this Agreement upon at least ten (10) days' written notice to the other Party, for breach of this Agreement by the other Party, unless during such notice period, the breaching Party fully cures the breach to the other Party's reasonable satisfaction.

6.3. Immediate Termination. University shall have the right to terminate immediately: (i) upon the institution by or against Supplier of insolvency, receivership or bankruptcy proceedings or any other proceeding for the settlement of debts; (ii) upon Supplier making an assignment for the benefit of creditors; (iii) upon Supplier's dissolution or ceasing to do business, or Supplier's taking of any corporate action for such purpose; (v) has a receiver, trustee, custodian or similar agent appointed to take charge of or sell any material portion of its property or business; or (vi) as set forth in Section 8.2 of these Terms & Conditions.

6.4. Continuing Obligations. In the event of expiration or termination of the Agreement for any reason, or at any time upon University's request, Supplier will: (i) immediately return to University any University proprietary materials, property and information in Supplier's possession or control, including, without limitation all University Confidential/Proprietary Information and any deliverables then under development; (ii) immediately permanently delete any University Confidential/Proprietary Information from Supplier's IT systems; and (iii) at University's request, cooperate with University in the transition of the work performed under the Agreement to University or its designee, which cooperation may include, at University's option, continued performance of Services in accordance with the terms of the Agreement as directed by University.

7. CONFIDENTIAL OR PROPRIETARY INFORMATION

7.1. Supplier's Obligations. Supplier agrees, on behalf of itself and its employees and subcontractors, to treat as confidential all University Confidential/Proprietary Information. Supplier shall not use or disclose any University Confidential/Proprietary Information except to the extent that such information is required to be disclosed to Supplier personnel who have a "need to know" such Confidential/Proprietary Information in order for Supplier to perform the Services or provide the Merchandise. Supplier agrees that the Confidential/Proprietary Information will be used solely in connection with performance of the Services and provision of the Merchandise and will not be used, directly or indirectly, in any manner in competition with or detrimental to University. Supplier shall maintain the Confidential/Proprietary Information with the same degree of care Supplier uses to maintain its own confidential information, and, in all events, Supplier shall maintain the Confidential/Proprietary Information with no less than commercially reasonable care. Supplier's confidentiality obligations include establishing and maintaining appropriate safeguards, procedures, and systems to avoid the unauthorized use, destruction, loss, alteration, access to, or disclosure of any University Confidential/Proprietary Information, in accordance with industry best practices and as otherwise required by applicable law. Supplier shall not disclose to University, nor induce University to use any proprietary, secret or confidential information or material belonging to others, including any current or former employers or persons with whom Supplier has had a consulting arrangement. In addition to the foregoing, Supplier will comply with the additional obligations applicable to Personally Identifiable Information as specified on the Data Privacy and Security Addendum.

7.2. University's Obligations. University shall treat as confidential all of Supplier's proprietary methodologies, software and materials that Supplier provides to University hereunder and which are marked "Confidential" or "Proprietary." In no event will Supplier's Confidential/Proprietary Information be deemed to include any University Confidential/Proprietary Information.

7.3. Mutual Obligations. During and after the term of the Agreement, neither Party will use nor disclose the other Party's Confidential/Proprietary Information, except for the purpose of providing, receiving or using the Merchandise or Services in accordance with this Agreement, or as may be required by applicable law, regulation or court order.

7.4. Exceptions. The obligations of confidentiality under this Section do not apply to any information to the extent it: (i) was known to the receiving Party prior to such Party's receipt of or access to that information under this Agreement; (ii) was or becomes a matter of public information or publicly available through no act or failure to act on the part of the receiving Party; (iii) is acquired from a third party entitled to disclose the information without obligation of confidentiality; or (iv) is developed independently and without use of the disclosing Party's Confidential/Proprietary Information. Except as otherwise required by applicable laws or regulations, the Parties agree to, and to cause their respective affiliates to, keep confidential all non-public information relating to this Agreement.

7.5 Return. Upon University's request or upon termination of this Agreement, as applicable, Supplier shall promptly return all documents and other materials received from University, including, but not limited to, all University Confidential/Proprietary Information and as further specified in the Data Privacy and Security Addendum with respect to Personally Identifiable Information.

8. REPRESENTATIONS AND WARRANTIES

8.1. Authority to Execute. Each Party hereby represents, warrants and guarantees to the other that it has the legal capacity to execute and perform the Agreement.

8.2. Debarment. Supplier represents, warrants and guarantees: (i) that it is not debarred, suspended, proposed for debarment, or declared ineligible by any State or Federal agency or excluded from participation in any federal health care program; (ii) that the execution and performance of this Agreement by Supplier does not, and will not, violate or conflict with any law, rule, regulation, judgment or order of any court or other adjudicative entity or regulatory agency binding on Supplier; (iii) that Supplier knows of no reason why Supplier is in any way (physically, legally or otherwise) precluded from performing the obligations under this Agreement in accordance with its terms; and (iv) that it does not have any non-disclosure, confidentiality, non-competition or other similar obligations to any current or former employer or any other person or entity, concerning proprietary, secret or confidential information used in this Agreement. In the event Supplier becomes debarred, or learns that a person performing on its behalf under the Agreement has been debarred or has become subject of debarment proceedings, Supplier shall promptly notify University and University shall have the right to immediately terminate the Agreement without penalty.

8.3. Conflict of Interest. Supplier represents, warrants and guarantees that there exists no actual, potential or appearance of conflict between Supplier and University. Furthermore, Supplier represents that it has not offered (and will not offer during the term of the Agreement) any compensation, reward, gift, favor, service, outside employment, reimbursement of expenses, loan, ownership interest, or anything else of value, to any officer, employee, or faculty member of University as an inducement to enter into or renew the Agreement. Supplier will notify University in writing of any change in conditions that might give the appearance of a conflict of interest.

8.4. Services. Supplier represents, warrants and guarantees that any Services provided under this Agreement shall be: (i) provided in a timely manner, and in accordance with the Agreement, applicable law and University policy; (ii) suitable for the purposes contemplated in the Agreement and befitting an institution of higher learning; (iii) in conformity with any applicable specifications or documentation; (iv) provided by personnel of required skill, experience and qualifications; (v) provided in a skillful, workmanlike and highly professional manner and consistent with generally recognized industry standards and best practices and procedures in Supplier's field; and (vi) provided to the satisfaction of University. Supplier will obtain all required governmental and third-party licenses, approvals, and permits appropriate for the provision of Services. Supplier warrants that the Services will not violate, infringe or misappropriate the rights of any third party, and that Supplier has all power and authority necessary to convey ownership of the Services to University in accordance with the Agreement.

8.5. Malware. Supplier represents, warrants and guarantees that any Merchandise, if applicable, and any deliverables resulting from the Services do not include, and that any method of transmitting said deliverables to University will not introduce, any program, routine, subroutine, known vulnerability, or data (including malicious software or "malware," viruses, ransomware, worms or Trojan Horses) that are designed to disrupt the proper operation of the Merchandise or deliverables or any other software or system used by University, or which, upon the occurrence of a certain event, the passage of time, or the taking of or failure to take any action, will cause the deliverables resulting from the Services or any system, software or data used in connection therewith to be destroyed, damaged or rendered inoperable or inaccessible.

8.6. Merchandise. Supplier represents, warrants and guarantees, for a period of twelve (12) months after delivery and acceptance, that any Merchandise provided under this Agreement shall be: (i) provided in accordance with the SOW and/or PO and correct and appropriate for the purposes contemplated in this Agreement; (ii) is fit for the purpose for which similar Merchandise is ordinarily employed; (iii) is free from defects in materials and/or workmanship, and is merchantable; (iv) was not manufactured and is not being priced or sold in violation of any federal, state or local law, including without limitation those relating to health and safety; (v) will perform according to industry standards and any applicable specifications or documentation; and (vi) will not violate, infringe or misappropriate the rights of any third party. In addition to the foregoing, Supplier represents and warrants to University that it has all power and authority to convey ownership of the Merchandise to University in accordance with this Agreement, that the Merchandise is free and clear of all liens and encumbrances, and that Supplier has a good and marketable title to same. Supplier agrees to defend and indemnify University for any liability and damages resulting from third-party claims challenging Supplier's or University's title to the Merchandise. These warranties shall survive acceptance of and payment for the Merchandise and shall be in addition to any other warranties or service guarantee, express or implied, given by Supplier to University. Replaced or repaired goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer.

8.7. Equipment. Supplier represents, warrants and guarantees that any equipment provided under the Agreement shall be: (i) the manufacturer's latest model in production (unless the PO specifies otherwise); (ii) that parts are all in production and will not be discontinued within the [five (5) year] period commencing on the date of delivery; (iii) that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request may emanate within a 48-hour period; and (iv) that during the manufacturer's warranty period for such equipment the Supplier shall replace immediately any equipment which is rejected for failure to meet the requirements of this Agreement.

8.8 Remedies. The warranties set forth in this Section 8 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of University's discovery of the noncompliance of the Merchandise or Services with the foregoing warranties. If University gives Supplier notice of noncompliance pursuant to this Section 8.8, Seller shall, at its own cost and expense, promptly (i) replace or repair the defective or nonconforming Merchandise and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming Merchandise to Supplier and the delivery of repaired or replacement Merchandise to University, and, if applicable, (ii) re-perform the applicable Services.

9. INDEMNIFICATION

9.1 Indemnification. To the fullest extent permitted by law, Supplier will indemnify, hold harmless and defend University, its trustees, officers, faculty, students, agents, and employees against any and all damages, suits, actions, claims, demands, liabilities, losses, judgments, costs and expenses, including, without limitation, attorneys' fees, court costs, judgments or settlements arising out of or relating to: (i) any acts or omissions of Supplier or any of its employees, agents or subcontractors in the performance of Supplier's obligations hereunder; (ii) any breach of or failure to perform any of the terms or conditions of the Agreement by Supplier, its employees, agents or subcontractors, and their employees and agents, including, but not limited to, Supplier's confidentiality, security or privacy obligations or obligations concerning timely payment to subcontractors; (iii) the inaccuracy or breach of any representation, warranty or covenant made by Supplier in the Agreement; (iv) any breach or violation of any applicable law by Supplier, its employees, agents or subcontractors, or their employees and agents; (v) any actual or alleged violation, infringement or misappropriation of any third-party intellectual property or proprietary rights (including, without limitation, trademark, trade secret, copyright or patent) by the Services, Work Product or Merchandise; (vi) injury (including personal injury or death) to any person (including Supplier's employees) or damage to any property of any kind or nature; (vii) any legal actions brought by Supplier's employees against University that would otherwise be covered by workers' compensation; or (viii) withholding or failure to withhold income taxes or paying or failing to pay social security or unemployment taxes or other assessments with respect to compensation paid to its employees. The obligations of Supplier in this provision shall not be construed to negate, abridge or otherwise reduce any other rights or obligations of indemnity which would otherwise exist as to a party or person described in this provision including those at law or in equity or otherwise. In claims against University, the indemnification obligation herein shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for any party under workers' compensation acts, disability benefit acts or other employee benefit acts. Supplier acknowledges that the indemnity granted to the University by this Agreement includes indemnification for claims brought by employees or subcontractors of Supplier against University. In the event that such a claim is made by an employee or subcontractor of Supplier, Supplier agrees to waive the immunity that the Worker's Compensation Act provides to employers against indemnity claims by parties such as University.

9.2 Additional Infringement Remedy. Should the Services, Work Product or Merchandise become, or in University's opinion be likely to become, the subject of a claim of infringement, Supplier shall, at University's option, procure for University the right to continue to use the Services, Work Product or Merchandise, shall replace the same with non-infringing functionally equivalent services or merchandise, or shall modify the Services, Work Product or Merchandise to make them non-infringing. If the foregoing remedies are not commercially feasible, or if Supplier determines to contest the claim of infringement without making such arrangements, Supplier shall promptly notify University. In such event, in addition to its rights to indemnification under Section 9.1 and any other remedies to which it may be entitled, University shall have the right to terminate the Agreement upon written notice, and to receive a prorated refund of any prepaid fees for unexpired portions of the Term.

9.3 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EXCEPT FOR INDEMNIFICATION OBLIGATIONS AND LIABILITIES, AND LIABILITY FOR PERSONAL OR BODILY INJURY (INCLUDING DEATH), DAMAGE TO TANGIBLE PROPERTY, VIOLATIONS OF LAW, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND UNAUTHORIZED DISCLOSURES OF CONFIDENTIAL INFORMATION: (i) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOST PROFITS, OR LOST BUSINESS, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (ii) EACH PARTY'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO TWO TIMES (2x) THE FEES PAID OR PAYABLE BY UNIVERSITY TO SUPPLIER PROVIDER UNDER THIS AGREEMENT.

10. INSURANCE

10.1. Required Coverage. Supplier and its subcontractors shall maintain at all times during the Term (or such longer period as may be hereinafter specified), the following insurance underwritten by an insurer with a minimum A. M. Best Financial Strength Rating of "A" and Financial Size Category of "VI" that is authorized to do business in the State of Delaware:

- (i) Workers Compensation Insurance in such amount as may be required by the laws of the State of Delaware;
- (ii) Employer's Liability Insurance with limits of not less than \$1,000,000 each accident, \$1,000,000 each employee and \$1,000,000 policy limit;
- (iii) Commercial General Liability Insurance including coverage for, without limitation, claims for bodily injury, sickness, disease or death of any person or damage to any property, including loss of use resulting therefrom, with limits of not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate, for the term of the Agreement;

10.2. Conditional Coverage. The Supplier and its subcontractors shall maintain at all times during the Term coverage listed below if applicable to the scope of work:

- (i) Comprehensive Automobile Liability Insurance with a combined single limit for personal injury and property damage of not less than \$1,000,000, to include owned, leased, hired and non-owned vehicles; and
- (ii) Supplier or Professional Liability Insurance covering errors and omissions in professional services, with limits not less than \$1,000,000 per claim and \$3,000,000 annual aggregate, for a period of not less than three (3) years after substantial completion of the Services.

10.3. Policy Requirements. Before commencing the Services, Supplier shall furnish a certificate for itself and its subcontractors, satisfactory to University, from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration and limits of liability thereunder, and further providing that the insurance will not be canceled until the expiration of at least thirty (30) days after written notice of such cancellation has been mailed to and received by University. University shall be named as additional insured under those policies of insurance identified in Sections 10.1(iii), which must be executed on insurance policy endorsements acceptable to University.

11. OWNERSHIP RIGHTS

11.1. Work Made for Hire. Supplier shall disclose promptly all Work Product to University. Supplier agrees that all Work Product made, discovered, developed, authored, prepared or conceived by Supplier in connection with the furtherance of the Agreement whether alone or in combination with another, whether or not on University' premises, are "works made for hire" and shall become upon creation the sole and exclusive property of University. Supplier acknowledges that no rights whatsoever in the Work Product are retained by Supplier including the right to prepare derivative works.

11.2. Work Product Rights. To the extent that Work Product may not, by operation of law, be works made for hire, Supplier agrees to and hereby does assign all right, title and interest in and to any Work Product to University, including any intellectual property rights attached to the Work Product. University shall have the right to apply for, prosecute, obtain, retain and transfer any and all copyrights, trademarks, registrations, patents or any such similar right or property interest arising from or in connection with the Work Product. Supplier agrees to cooperate with and provide all reasonable assistance to University, its designees, assignees or licensees in connection with the foregoing. University has the right to alter, reproduce, and use the Work Product as it sees fit.

11.3. Supplier's Rights. Notwithstanding the foregoing, Supplier will retain ownership of its pre-existing and proprietary materials and other intellectual property that may be incorporated into the Work Product, provided that Supplier will inform University in writing before incorporating any pre-existing material or pre-existing intellectual property into the Work Product. Supplier hereby grants University a perpetual, irrevocable, royalty-free, fully-paid worldwide right and license (with the right to sublicense) to freely use, make, have made, reproduce, disseminate, display, perform, and create derivative works based on such pre-existing materials and intellectual property as may be incorporated into or necessary to use and exploit the Work Product or otherwise provided to University in the course of performing the Services.

11.4. Recording Rights. Supplier grants to University a nonexclusive, nontransferable license and right to make an audio and/or video recording or photographic images of the Services rendered, and to retain a copy of the audio, video and/or photographs for the purpose of archival records and certain personal use, such as educational, informational, advertising or other commercial use, provided such use does not result in direct monetary payment to University. Supplier hereby acknowledges and agrees that University shall be, and is, the sole owner of all rights, title and interest in and to the audio, video and/or photographs, including the copyright.

12. COMPLIANCE WITH LAWS; CODES; RULES; REGULATIONS

12.1. Compliance with Laws. Supplier represents and warrants that it and any Merchandise, Services, and/or Work Products contemplated hereunder are, and shall remain at all times during the Term, compliant with all applicable laws, regulations, executive orders, and ordinances. Supplier shall provide, upon University's reasonable request, copies of relevant documentation (e.g., audit reports or certifications) verifying Supplier's compliance with such laws, regulations, executive orders, and ordinances.

12.2. Anti-Kickback. Each Party certifies that it shall not violate the federal Copeland "Anti-Kickback" Act (18 U.S.C. 874), the anti-kickback statute, set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute"), or the federal prohibition on physician self-referrals, set forth at 42 U.S.C. § 1395nn ("Stark Law"), with respect to the performance of its obligations under this Agreement.

12.3. Non-Discrimination in Employment. University is an equal opportunity employer. Supplier hereby represents that it is an equal opportunity Supplier and it and its subcontractors (if any) agree to comply with the laws and regulations pursuant to the Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 503 of the Rehabilitation Act of 1973, Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A) as applicable, relating to the notice of employee rights under federal labor laws, and all other laws guaranteeing equal employment. The Supplier agrees to ensure compliance with these laws and to require the same of its subcontractors.

12.4. Federal Funding. If this Agreement is funded by the federal government, Supplier is required to comply with all applicable federal laws, which are hereby incorporated by reference as if they were set forth herein, including, but not limited to all laws, regulations and rules. Procurements made with federal funds are subject to compliance with the standards and requirements as set for in 2 CFR, Part 200. All procurement requirements contained in the above Circulars are incorporated herein by reference. Information regarding the source of funds for this PO will be provided to Supplier upon request.

12.5. Prohibited Technologies and Investments. Supplier represents and warrants that (i) any and all Merchandise, Services, and/or Work Products contemplated hereunder do not, and shall not during the Term, contain or rely upon any technologies prohibited by United States law or regulation, including by the Committee on Foreign Investment in the United States (CFIUS); (ii) Supplier does not, and shall not during

the Term, accept or permit foreign investments in violation of CFIUS requirements; and (iii) Supplier has disclosed to University any and all information for University to evaluate Supplier's impact on University's own compliance.

12.6. Recovered Materials. If this Agreement is funded by the federal government, any goods (or services where applicable) delivered by Supplier must comply with the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 and must contain the highest percentage of recovered materials practicable.

13. GENERAL TERMS

13.1. Governing Law; Jurisdiction. The Agreement shall be construed in accordance with the laws of the State of Delaware. The Parties agree that any and all disputes arising out of the Agreement shall be filed and heard only in: (i) the Complex Commercial Litigation Division of the Superior Court of New Castle County, Delaware; or (ii) in default of subject matter jurisdiction therein, any other state court of competent subject matter jurisdiction located within New Castle County, Delaware; or (iii) the United States District Court for the District of Delaware, and the Parties hereto consent to both personal jurisdiction and venue in and to proceedings brought in any such court which has competent subject matter jurisdiction.

13.2. Collection, Attorney or Litigation. In the event of any controversy, claim or action being filed respecting the Agreement, the substantially prevailing Party shall be entitled, in addition to all other expenses, costs or damages, reasonable attorneys' fees as determined by a court, whether or not such controversy was litigated or prosecuted to judgment.

13.3. Independent Contractor. Supplier is an independent contractor, and nothing in the Agreement constitutes the Parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking, or allow either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever. Furthermore, Supplier and its employees or agents, are not, and shall not be considered, employees of University. Supplier acknowledges full responsibility for compliance with all Federal, State, and City tax regulations regarding taxes that may accrue for the Services, including expenses, if any, paid to Supplier as a result of Services rendered to University. Further, University will not provide any medical, health, insurance or similar plans or workers' compensation or any other benefit whatsoever to Supplier, its agents or employees. Supplier has no actual authority, nor shall the Supplier give the impression of having apparent authority, to bind or represent University with regard to any third parties.

13.4. Subcontracting or Assignment. Supplier shall not assign, delegate or subcontract, in whole or in part, any of the work or Services covered by this Agreement, nor shall any interest in this Agreement be assigned or transferred, without prior written approval of University. All permitted subcontractors to University must agree in writing to be bound by all University policies. Supplier shall be solely responsible for paying the fees and expenses of its subcontractors without reimbursement.

13.5. Third Parties. Except for Supplier's indemnification and license obligations set forth herein, the Agreement shall not confer any rights or remedies upon any third -party other than the Parties to the Agreement and their respective successors and permitted assigns.

13.6. Premises. Supplier shall confine its facilities, materials, tools and equipment in areas specified by University for that purpose, if applicable. Supplier shall on a daily basis and on completion of Services, clean up and remove all waste materials, rubbish, tools and machinery and leave adjoining premises, driveways and streets free and clear from all obstructions. At the completion of the Services, Supplier shall return University' site to its original condition or as otherwise required in the Agreement. Damages to the premises caused by Supplier or their staff, either intentionally or through negligence, shall be paid for by the Supplier, deducted from the payment, or result in the payment being withheld by University.

13.7. Alcohol and Drugs. Intoxicating beverages or substances are not permitted to be in the possession of any person performing under the Agreement on University's premises. Supplier's employees, agents and guests are prohibited from having alcoholic beverages or controlled dangerous substances on University property. Supplier shall inform all of its employees, agents and guests of this prohibition, and shall assist University in enforcing this policy. In the event Supplier, its employees, agents or guests arrive at the service location under the influence of intoxicating beverages or substances, University may terminate the Agreement without liability, and deem such conduct a breach of the Agreement.

13.8. Amendment. No changes to the Agreement shall be made except in writing by University and signed by University and Supplier.

13.9. Click-Throughs Superseded. In the event Supplier presents terms of use, end user agreement, or other agreements or understandings, whether electronic, click-through, or shrink-wrap, and whether verbal or written, to University' employees or other end users, such agreements are null and void and of no force or effect.

13.10. Notices. Any notices regarding the Agreement must be in writing and will be deemed to have been delivered if: (i) delivered personally; (ii) sent by electronic mail attachment, with receipt of confirmation; (iii) sent by the United States certified mail, return receipt requested, postage prepaid; or (iv) sent via a nationally recognized overnight courier service, in each case properly addressed to the Party to receive the same as follows:

If to University: UNIVERSITY OF DELAWARE PROCUREMENT SERVICES
550 South College Avenue
Newark, DE 19713
Attn: Chief Procurement Officer procurement@udel.edu

with a copy to: University of Delaware

Office of the General Counsel
162 The Green, Room 112
Newark, DE 19716-0101

If to Supplier: as set forth in the applicable Purchase Order

Either Party may change its addressee or other information by providing written notice thereof to the other Party in the manner provided herein. Notices shall be effective upon receipt.

13.11. Non-Waiver. The failure of either Party to exercise any of its rights under this agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

13.12. Severability. If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, it shall be ineffective only to the extent of such prohibition and the validity and enforceability of all the remaining provisions shall not be affected thereby.

13.13. Survival. The following sections shall survive termination or expiration of this Agreement: Section 2, 6, 7, 8, 9, 10, and 13.

13.14. Remedies. Supplier acknowledges that University will be irreparably harmed if Supplier's obligations hereunder are not specifically enforced and that University would not have an adequate remedy at law in the event of an actual or threatened violation by Supplier of its obligations hereunder. Therefore, Supplier agrees and consents that University shall be entitled to seek an injunction, including preliminary, or any appropriate decree of specific performance for any actual or threatened violation or breach by Supplier or any agent of Supplier, without the posting of any bond, and such other relief as may be just and proper, including the right to recover all losses or damages suffered by University resulting from any such breach or threatened breach. In the event University applies to seal any papers produced or filed in any judicial proceedings to preserve confidentiality, Supplier specifically agrees not to oppose such application and to use its best efforts to join such application.

13.15. Use of Name. Supplier will not use the name, insignia, or symbols of University, its faculties or departments, or any variations or combination thereof, or the name of any governors, trustees, faculty member, other employee, or student of University for any purpose whatsoever without University' prior written consent.

13.16. Trademark and Licensing. Supplier agrees to comply with all licensing and trademark policies and procedures for Merchandise sold by Supplier within the University's Brand Style Guide. The University's Brand Style Guide can be found here:

<https://www.udel.edu/content/dam/udelimages/ocm/style-guide/brand-style-guide.pdf>

All costs associated with this process will be borne by the Supplier.

13.17. Force Majeure. Neither Party shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting there from, due to an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable, including but not limited to, acts of God, public enemy or government, riots, fires, floods, natural catastrophe, explosions, riots, embargoes, wars, acts of terrorism, pandemics or epidemics (a "Force Majeure Event"). Supplier's financial inability to perform, changes in

cost or availability of materials, components or services, market conditions, or supplier actions or contract disputes will not excuse performance by Supplier under this Section. Supplier shall give University prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Supplier shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under the Agreement. In the event of a Force Majeure Event, the date of delivery or performance shall be extended for a period not to exceed the time lost by reason of the failure or delay; provided, that University may terminate the Agreement if the period of failure or delay exceeds fifteen consecutive (15) days. University shall have no obligation to make any payments to Supplier during the period of failure or delay for any Services or Merchandise affected by the Force Majeure.

13.18. Access to Records. University shall have full access to Supplier records, including, but not limited to financial records, in connection with the Agreement. All financial records shall be subject to audit by University upon advanced notice. Supplier shall maintain all documentation related to Merchandise, Services and transactions under the Agreement for a period of seven (7) years from date of final payment.

13.19. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES THAT THEY SHALL, AND THEY DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BETWEEN THE PARTIES OR THEIR SUCCESSORS OR ASSIGNS ON ANY MATTERS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT OR THE SERVICES.

ADDITIONAL TERMS INCORPORATED INTO ENGAGEMENTS WITH ARTISTS OR PERFORMERS

14. ARTIST / PERFORMER TERMS

14.1. Logistics. Supplier must provide University with the following information, in writing, at least 30 days prior to the Services: (i) full technical requirements to be provided for the event; (ii) scheduled time of Supplier's arrival to the Services location; (iii) scheduled time of any sound checks; and (iv) diagram indicating placement of equipment on stage or at venue. Supplier shall furnish all materials to perform the Services, except where agreed to in advance by both Parties. If University deems any of the logistics unreasonable, then University has the right to terminate without any liability to Supplier for all fees and expenses. Supplier shall reimburse University for any additional costs at the time of the event incurred by University as a result of changes required by Supplier from the technical requirements.

14.2. Advertising. Services are for the University community and invited guests; therefore, Supplier shall not conduct any outside advertising or radio promotions unless agreed upon in writing by University.

14.3. Merchandise. Supplier shall not sell any products while performing the Services, including but not limited to the sale of CD's, records, tapes or other mementos, unless agreed upon in writing by University.

14.4. Control of Services. If Supplier is not punctual in arrival according to the schedule provided by Supplier to University, Supplier shall reimburse University for any additional costs incurred by University as a result of such tardiness (e.g., facilities maintenance services, electrician's fees, etc.). If Supplier fails to appear for the Services, Supplier shall reimburse University for all bona fide costs related to the event and this Agreement will be voidable by University. Notwithstanding the foregoing provisions of this Agreement, if the Supplier fails to perform to the specifications of this Agreement, payment may be reduced or withheld by University. Supplier will control the details and manner of the Services but it is agreed to and understood that University shall have the right to direct Supplier to discontinue any activity constituting violation of a university policy, state statute, applicable ordinances, direction of lawful authority, or, if University determines, in its sole discretion, that the Services is disruptive to the normal functions of the university. Such discontinuation shall not be considered a breach of this Agreement.

14.5. Security. Supplier shall comply with all security measures and procedures adopted by University, including but not limited to metal detector scanning. Supplier agrees not to engage in, or encourage audience participation in behaviors that in any way threaten or endanger personal safety or security, including but not limited to stage diving, crowd surfing, floating, or moshing. Supplier agrees not to enter the audience at any point during the event, nor invite or encourage audience members to come on stage, unless previously approved in writing by University as part of the event. Supplier acknowledges that such behaviors significantly increase the risk of injury to patrons. Supplier shall be responsible for any and all damage or injury arising from any such incident.

ADDITIONAL TERMS INCORPORATED INTO HOSPITALITY AGREEMENTS

15. HOSPITALITY TERMS

15.1. Attrition Fees. University shall pay Supplier if University does not utilize 80% of the total room nights committed in the room block. University will be invoiced following the official end date, as liquidated damages and not as penalty, for the difference between 80% of the total room nights and University' actual usage of rooms, multiplied by the single group room rate.

15.2. Mitigation/Resell of Guest Rooms or Meeting Space. Supplier shall undertake all reasonable efforts to resell any unused or cancelled rooms and any unused or cancelled function space, and it will credit those revenues against any penalties, attrition fees, performance clause fees, or liquidated damages. For any day that the Supplier achieves 100% occupancy during the official event dates, University will receive credit for full achievement of the contracted guest room block for that day. Supplier must submit to University a copy of the daily occupancy report documenting that the rooms were not resold and were available for sale. Any revenue received by the Supplier from the resell of guest rooms or function space over the cancelled event dates shall be credited back to University within thirty (30) days after the final date of the meeting.

15.3. Food and Beverage Minimum Charge. Supplier shall establish an 80% Minimum Food and Beverage Charge which it shall require University to fulfill for any functions at which food and/or beverage services are required at the event ("Food and Beverage Functions"). Should the expected guest count drop below the agreed-upon estimated number of guests prior to the event, Supplier shall advise University of alternatives for food and beverage which shall bring the function back up to the Minimum Food and Beverage Charge for the function.

15.4. Cancellation. University may cancel any event upon written notice to Supplier at any time prior to the event date. Such termination and cancellation shall be followed by a cancellation payment to the non-cancelling Party based on the following scale:

120 days up to 91 days prior to start date of event	25% of Guestroom Revenue only
90 days up to 61 days prior to start date of event	50% of Guestroom Revenue only
60 days up to 31 days prior to start date of event	75% of Guestroom Revenue, 40% of Food & Beverage, and Rental Minimums
30 days prior to start date of event	85% of Guestroom Revenue, 80% of Food & Beverage, and Rental Minimums

15.4.1. Change in Management. The Supplier shall promptly notify University if there is a change in its management prior to the event and University shall have the right to cancel this Agreement without liability upon written notice to Supplier.

15.4.2. Construction/Renovation. In the event that Supplier will be undergoing any construction or renovation during the event dates, Supplier shall promptly notify University and University shall have the right to cancel this Agreement without liability upon written notice to Supplier, if in the reasonable judgment of University such construction or renovation may unreasonably affect the use of the facilities or the quality of service to be provided under this Agreement.

**Data Privacy and Security Addendum
between
the University of Delaware (the “University”) and
the Supplier**

This Addendum applies only when the Supplier provides goods or services under a Purchase Order/Agreement (herein the “Agreement”) that requires the Supplier to create, obtain, transmit, use, maintain, process, store, or dispose (any one of which referred to herein as a “Use”) University Data (as defined below) in order to fulfill its obligations to the University.

This Addendum specifies the terms and conditions pursuant to which the Supplier will Use the University Data and how the Supplier must secure the University Data during the Term of the Agreement and after its termination.

1. DEFINITIONS

- 1.1. **“End User”** means the individuals authorized by the University to use the Services provided by the Supplier under the Agreement.
- 1.2. **“Personally Identifiable Information”** includes but is not limited to the following: (a) personal identifiers such as name, address, phone, number, date of birth, Social Security number, email address, student or personnel identification number, and non-directory information; (b) “personal information” as defined in 6 Del. Code §12B-101(7) and or successor laws of the State of Delaware; (c) “personally identifiable information” contained in student “education records” as defined in the Family Educational Rights and Privacy Act, 20 USC §1232g and its implementing regulations (“FERPA”); (d) “protected health information” as defined in the Health Insurance Portability and Accountability Act, 45 CFR §160.103 (“HIPAA”); (e) “customer information” as defined in the regulations implementing the Gramm-Leach-Bliley Act (“GLB”); (f) “covered accounts” as defined at 16 CFR §681.2 (the “Red Flags Rule”); (g) credit and debit card numbers and/or access codes or other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards (“PCI DSS”); (h) other financial account numbers, access codes, driver’s license numbers; (i) state or federal identification numbers such as passport, visa, or state identity card numbers; and (j) “personal data” as defined in and subject to the European Union General Data Protection Regulation (“GDPR”).
- 1.3. **“Securely Destroy”** means taking actions that render data written on media unrecoverable by both ordinary and extraordinary means.
- 1.4. **“Security Breach”** means a security-relevant event in which the security of a system or procedure incorporated in to the Use of data is breached, and in which University Data is exposed to unauthorized disclosure, access, alteration, or other use.

- 1.5. **“Services”** means any goods or services acquired by the University from the Supplier.
- 1.6. **“University Data”** includes all Personally Identifiable Information and other information that is not intentionally made generally available by the University on public websites, including, but not limited, to business, administrative and financial data; intellectual property; and patient, student, and personnel data, however provided, whether by University, End User, or other individual associated with University in connection with Supplier’s Services.

2. RIGHTS AND LICENSE TO THE UNIVERSITY DATA. The parties agree that as between them, all rights including all intellectual property rights in and to University Data are and shall remain the exclusive property of the University, and Supplier has a limited, nonexclusive, non-transferable license to Use the University Data solely for the purpose of performing its obligations under the Agreement.

3. DATA PRIVACY

- 3.1. Supplier will Use University Data only for the purpose of fulfilling its duties under the Agreement and will not further disclose University Data to any third party without the prior written consent of the University, except as may be required by the Agreement or as otherwise required by law.
- 3.2. Supplier will provide access to University Data only to its employees and subcontractors who need to Use the University Data to fulfill Supplier’s obligation under the Agreement. Supplier will ensure that employees who perform work under the Agreement have read, understood, and received appropriate instruction as to how to comply with the requirements of this Addendum.
- 3.3. Without limiting any other provisions of this Addendum, If Supplier will Use University Data that includes:

3.3.1. Education records subject to FERPA, Supplier acknowledges that for the purposes of the Agreement the University designates Supplier as a “school official” with “legitimate educational interests” in the University education records, as those terms are defined by FERPA and its implementing regulations, and Supplier agrees to abide by the limitations and requirements imposed on school officials specified by FERPA and by the University’s FERPA policy. Supplier will use the education records only for the purpose of fulfilling its duties under the Agreement for University’s and End User’s benefit and will not share such University Data with or disclose it to any third party except as provided for in the Agreement, required by law, or authorized in writing by the University;

3.3.2. Protected health information subject to HIPAA, Supplier acknowledges that for the purposes of the Agreement the University designates Supplier as a “business associate” as defined by HIPAA, and Supplier agrees to abide by the limitations and requirements applicable to

business associates as mandated by HIPAA and as specified in University policy. Supplier will only Use the protected health information for the purpose of fulfilling its duties under the Agreement for University's and End User's benefit and will not share protected health information or disclose it to any third party except as provided for in the Agreement, required by law, or authorized in writing by the University;

3.3.3. Customer information subject to the GLB, Supplier will implement and maintain appropriate safeguards to protect this University Data as required by the GLB and its implementing regulations and as specified in University policy.

3.3.4. Covered accounts subject to the Red Flag Rules, Supplier will comply with the Red Flags Rule and University policy with respect to the covered accounts. Supplier will promptly report any Red Flags to the University and shall take reasonable steps to prevent or mitigate identity theft, including any reasonable steps University requests.

3.3.5. Personal data subject to the GDPR, Supplier agrees to the additional obligations specified in the GDPR Schedule, attached hereto and incorporated herein.

4. DATA SECURITY

4.1. Supplier will Use University Data in a secure environment in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized Use and in accordance with all applicable laws. Such measures will be no less protective than those used to secure Supplier's own data of a similar type, and in no event less than reasonable in view of the type and nature of the University Data involved. Without limiting the foregoing, Supplier warrants that all electronic University Data will be encrypted in transmission (including web interface) and stored at no less than 128-bit level encryption.

4.2. Supplier will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing Services under the Agreement and in accordance with all applicable laws.

4.3. If Supplier's Use of University Data includes credit card data, Supplier warrants that for the life of the Agreement and while the Supplier is in possession of University customer cardholder data, the software and services used for processing transactions will be compliant with PCI DSS. Supplier acknowledges and agrees that it is responsible for the security of all University customer cardholder data or identity information Supplier Uses, including but not limited to protecting against fraudulent or unapproved use of such credit card or identity information.

5. EMPLOYEE BACKGROUND CHECKS AND QUALIFICATIONS

5.1. Supplier shall ensure that its employees and subcontractors have undergone appropriate background screening and possess all needed qualifications to comply with the terms of the Agreement.

5.2. If under the Agreement Supplier must Use Personally Identifiable Information that includes protected health information, Supplier will verify that the all employees who have potential to Use such University Data are not listed on the federal List of Excluded Individuals (LEIE) database or any federal or state equivalent related to prevention of fraud under Medicare, Medicaid, or other federal health care programs.

6. DATA AUTHENTICITY AND INTEGRITY; BACKUPS.

6.1. Supplier will take reasonable measures, including audit trails, to protect University Data against deterioration or degradation of data quality and authenticity.

6.2. Supplier will establish and implement regular backup, archiving, and redundancy procedures to ensure that a backup file set that is not more than twenty-four (24) hours old is always available and that University Data is not inadvertently or deliberately discarded without University's prior written consent. Supplier will not archive or destroy University Data except in accordance with such backup, archiving, and redundancy procedures. Upon the termination or expiration of the Agreement, Supplier shall provide University with thirty (30) days' written notice of any proposed changes to the backup, archiving, and redundancy procedures.

7. SECURITY BREACH

7.1. Response. Immediately upon becoming aware of a Security Breach, or of circumstances that could have resulted in unauthorized Use of University Data, Supplier will notify the University, fully investigate the incident, and cooperate fully with the University's investigation of and response to the incident. Except as otherwise required by law, Supplier will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the University.

7.2. Liability. In addition to any other remedies available to the University under law or equity, Supplier will reimburse the University in full for all costs the University incurs in investigation and remediation of such Security Breach, including but not limited to providing notification to individuals whose Personally Identifiable Information was affected and to regulatory agencies or other entities as required by law or contract; providing one year of credit monitoring (or such other term of monitoring as may be required by applicable law or by applicable oversight regulatory agencies) to the affected individuals if the Personally Identifiable Information exposed during the Security Breach could be used to commit financial identity theft or

as otherwise may be required by applicable law; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as the result of the Security Breach. This provision shall survive the expiration or termination of the Agreement.

8. RESPONSE TO LEGAL ORDERS, DEMANDS, OR REQUESTS FOR DATA

- 8.1.** Except as otherwise expressly prohibited by law, Supplier will (a) immediately notify the University of any subpoenas, warrants, or other legal orders, demands, or requests Supplier receives seeking University Data; (b) consult with the University regarding its response; (c) cooperate with the University's reasonable requests in connection with efforts by the University to intervene and quash or modify the legal order, demand, or request; and (d) upon the University's request, provide the University with a copy of its response.
- 8.2.** If the University receives a subpoena, warrant, or other legal order, demand, or request seeking University Data maintained by Supplier, the University will promptly provide a copy to Supplier. Supplier will promptly supply the University with copies of data required for the University to respond, and will cooperate with the University's reasonable requests in connection with its response.

9. DATA TRANSFER UPON TERMINATION OR EXPIRATION

- 9.1.** Upon termination or expiration of the Agreement, Supplier will ensure that all University Data are securely returned or destroyed as directed by the University in its sole discretion. Transfer to the University or a third party the University designates will occur within a reasonable period of time and without significant interruption in service. Supplier will ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of the University or its transferee, and to the extent technologically feasible, that the University will have reasonable access to University Data during transition. In the event that the University requests destruction of the University Data, Supplier agrees to Securely Destroy all University Data in its possession and in the possession of any subcontractors or agents to which the Supplier might have transferred University Data. Supplier agrees to provide documentation of University Data destruction to the University.
- 9.2.** Supplier will notify the University of impending cessation of its business and any contingency plans, including plans for the immediate transfer of any previously escrowed assets and data and providing the University with access to Supplier's facilities to remove and destroy University-owned assets and University Data. Supplier shall implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the University. Supplier will also provide a full inventory and configuration of servers, routers, other hardware, and software

involves in the service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the University. Supplier will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and effect on the University, all such work to be coordinated and performed in advance of the formal, final transition date.

- 9.3.** Supplier's obligations under this section shall survive the termination or expiration of the Agreement until all University Data has been returned or Securely destroyed.

10. AUDITS

- 10.1.** The University reserves the right in its sole discretion to perform audits of Supplier at the University's expense to ensure compliance with terms of the Agreement and this Addendum. Supplier shall reasonably cooperate in the performance of such audits. This provision applies to all agreements under which the Supplier Uses University Data.
- 10.2.** If under the Agreement Supplier must Use the subset of University Data known as Personally Identifiable Information or financial or business data the University has identified to Supplier as having the potential to affect the accuracy of the University's financial statements, Supplier will at its expense conduct or have conducted at least annually a (a) SOC Type II audit, or other security audit with audit objectives deemed sufficient by the University; (b) compliance audit or other assessment, certification, or verification as may be required by applicable law or regulation; (c) vulnerability scan, performed by a scanner approved by the University, of Supplier's electronic systems and facilities that are used in any way to deliver electronic services under the Agreement; and (d) formal penetration test, performed by a process and qualified personnel approved by the University, of Supplier's electronic systems and facilities that are used in any way to deliver electronic services under the Agreement.
- 10.3.** Supplier will provide the University upon request the results of the above audits, scans, and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under the Agreement and this Addendum. The University may require, at University expense, the Supplier to perform additional audits and tests, the results of which will be provided promptly to the University.

11. COMPLIANCE

- 11.1.** Supplier will comply with all applicable laws, regulations and rules in connection with its Use of University Data, including, without limitation, those that are specifically described in this Addendum (collectively, "Applicable Laws").
- 11.2.** Supplier warrants that the Services it will provide to the University are fully compliant with and will enable the University to be compliant with relevant requirements of all laws, regulation, and

guidance applicable to the University or the Supplier, including, but not limited to, W3C's Web Accessibility Initiative Web Content Accessibility Guidelines (WAI WCAG) 2.1 AA. Supplier will provide, upon University's request, a copy of its current Voluntary Product Accessibility Template (VPAT) indicating how the Supplier Services comply with the standards of Section 508 of the Rehabilitation Act, 29 U.S.C. 794d. In addition to the foregoing requirements, University will provide advance notice and guidance to Supplier regarding any other accessibility accommodations needed by the individuals utilizing the Services. Supplier will make reasonable commercial efforts to comply with requests.

- 12. CYBER INSURANCE.** In addition to insurance required under the Agreement, Supplier shall at its sole cost and expense procure and maintain through the term of the Agreement and for two (2) years following the termination or expiration of the Agreement cyber/network privacy insurance with limits of \$5,000,000 per claim/in aggregate. Such policy shall provide coverage for disclosures and/or breaches of University Data arising out of or relating to Supplier's Services. Such policy shall also include coverage for the costs associated with restoring lost or damaged University Data, sending breach notifications to affected individuals, public relations expenses, fines and penalties. Such policy shall not contain exclusions for the acts or omissions of either Supplier or University or their respective employees, agents, subcontractors or volunteers, whether intentional or unintentional, resulting in or relating to any Use of University Data not expressly permitted by the Agreement and this Addendum or any breach of University Data. Supplier must notify University at least thirty (30) days prior to the cancellation or modification of such policy.
- 13. INDEMNITY.** Notwithstanding any other provision set forth in the Agreement, Supplier agrees to indemnify, defend and hold harmless the University, its officers, agents, and employees from any claims, damages, liability, injury, expenses, or losses (including defense costs and attorney's fees) caused by or arising out of the performance or non-performance of the obligations set forth in this Addendum by Supplier or its agents or subcontractors provided that such liability is not attributable to the sole negligence of the University. This provision shall survive the expiration or termination of this Agreement.
- 14. CONFLICTS.** The terms and conditions of this Addendum shall supersede any conflicting or inconsistent terms and provisions in the Agreement, including all exhibits or other attachments thereto and all documents incorporated therein by reference, and any Supplier end-user license agreement; or privacy or security or other policy of Supplier to which End Users or other persons associated with the

University may be required to acknowledge when using Supplier's Services. Without limiting the forgoing, any limitation or exclusion of damages provision shall not be applicable to this Addendum.

This Addendum shall be effective as of the effective date of the Agreement and shall remain effective so long as the Agreement remains in effect, including during any extensions or renewals of the Agreement. Nothing in this Addendum shall limit any of the University's rights or remedies under the Agreement or at law.

GDPR Schedule

This GDPR Schedule specifies the obligations applicable to Supplier when it is processing personal data on behalf of the University and such data is subject to the GDPR. In connection with such data, Supplier shall be deemed a "processor" under the GDPR and all references to the processor herein shall be a reference to the Supplier. To the extent the University is a controller of personal data being processed by the Supplier, the references to the controller herein shall be deemed a reference to the University. Terms used in this GDPR Schedule shall have the meaning given to them in the GDPR.

Supplier agrees that it is obligated as follows:

1. Supplier has implemented appropriate technical and organizational measures in such a manner that processing will meet the requirements of the GDPR and ensure the protection of the rights of any data subject.
2. Supplier will not engage another processor without prior specific or general written authorization of the controller. In the case of general written authorization, the processor will inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.
3. When processing personal data Supplier will:
 - a. Process the personal data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organization, unless required to do so by Union or Member State law to which the processor is subject; in such case, the processor shall inform the controller of that legal requirements before processing, unless that law prohibits such information on important grounds of public interest;
 - b. Ensure that persons authorized to process the personal data, including without limitation Supplier's employees and contractors, have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - c. Take all measures required pursuant to GDPR Article 32;
 - d. Comply with conditions referred to in GDPR Article 28, paragraphs 2 and 4 for engaging another processor;

- e. Taking into account the nature of the processing, assist the controller by appropriate technical and organizational measures, to the extent possible, for the fulfillment of the controller's obligation to respond to requests for exercising the data subject's rights set forth in GDPR Chapter III;
- f. Assist the controller in ensuring compliance with the obligations pursuant to GDPR Article 32 to 36 taking into account the nature of the processing and the information available to the processor;
- g. At the choice of the controller, delete or return all the personal data to the controller after the end of the provision of services relating to processing, and deleted existing copies unless the Union or Member State law requires storage of the personal data;
- h. Make available to the controller all information necessary to demonstrate compliance with the obligations set forth in Article 28 and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller. The processor shall immediately inform the controller if, in its opinion, an instruction infringes the GDPR or other Union or Member State data protection provisions.

4. If Supplier engages another processor for carrying out specific processing activities on behalf of the University, the same data protection obligations included in this GDPR Schedule will be imposed on that other processor by way of contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of GDPR. If that other processor fails to fulfill its data protection obligations, Supplier shall remain fully liable to the University for the performance of that other processor's obligations.
5. Supplier shall maintain a record of all categories of processing activities carried out on behalf of the University in compliance with Article 30(2).
6. Supplier shall notify the University immediately upon becoming aware of any complaint or concern about the Supplier's processing activities or compliance with the GDPR.