

1. **CONTROLLING DOCUMENT:** This Addendum amends and/or supplements the Agreement (“Agreement”) between Western Carolina University (“Institution”), and the signatory to the Agreement (“Provider”) to which this Addendum is attached. In the event of conflict between this Addendum and the attached Agreement, this Addendum shall be controlling.
2. **GOVERNMENTAL IMMUNITY:** The parties understand and agree that nothing herein shall constitute a waiver of sovereign immunity or limits of governmental liability that are set forth in the North Carolina Tort Claims Act, NCGS §143-291 et seq. Neither party shall be responsible for personal injury or property damage except that may result from its own negligence or the negligence of its officers, employees, or others for whom the party is legally responsible. Institution will be responsible to the extent permitted by the laws of North Carolina, in proportion to and to the extent that such liability for damages is caused by or results from the acts of Institution, its officers or employees.
3. **CHOICE OF LAW/CHOICE OF VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina per NCGS §22B-3. Any limitation of the time for which to bring an action, otherwise prescribed by the North Carolina statute of limitations, shall be null and void.
4. **ARBITRATION:** Any language in the Agreement referencing a requirement of the Parties to arbitrate or mediate claims or disputes shall be null and void.
5. **INTELLECTUAL PROPERTY:** The Provider shall not use any trademarks, trade dress, indicia, logo, or graphic associated with the Institution without the written consent of the Institution. Provider agrees not to use the existence of this Agreement or the name of the Institution as part of any commercial advertising. Provider shall have no right, title, or interest in any intellectual property provided to Provider by the Institution; Institution’s agents or assigns; and Institution’s employees.
6. **INDEMNIFICATION:** Provider shall indemnify, protect, defend, and hold harmless Institution and its trustees, officers, agents, employees, representatives, and assigns, and the Institution and its governors, officers, agents, employees, representatives, and assigns from and against any and all claims, demands, suits, and causes of action and any and all liabilities, costs (including but not limited to reasonable attorney’s fees and court costs), damages, expenses, and judgments incurred in connection therewith, whether arising in equity, at common law or by statute, or under the law of contracts, torts or property only to the extent directly arising from the negligent acts or omissions of Provider in its performance under this Agreement.
7. **AVAILABILITY OF FUNDS:** Any and all payments to the Provider are dependent upon and subject to the availability of funds to the Institution for the purpose set forth in this Agreement.
8. **ACCELERATION CLAUSES:** Any language permitting the acceleration of any or all payments by the Institution under the Agreement due upon the Provider’s finding of default by the Institution shall be null and void.
9. **ASSIGNMENT:** No assignment of Provider’s obligations shall be permitted, provided however, that the Provider may assign this Agreement to an acquirer of all or substantially all the assets or stock of the Provider, or a successor by merger or other combination.
10. **PUBLIC RECORDS:** Provider understands that Institution is an agency of the State of North Carolina and is subject to the North Carolina Public Records Act (N.C.G.S. §132-1 *et seq.*) which may require the public release of the Agreement, including this Addendum, and all terms and conditions contained herein.
11. **CANCELLATION:** All contract obligations shall prevail for at least 90 days after the effective date of the contract. After that period for the protection of both parties, this contract may be canceled in whole or in part by either party by giving 30 days prior notice in writing to the other party. Provider shall delete all Institutional Data within thirty (30) days of cancellation and/or termination of the Agreement upon the written request from Institution, and Provider shall confirm such to Institution with thirty (30) days of destruction.
12. **DATA HOSTING AND ACCESS:** The parties agree that all data provided by the Institution (Institutional Data) shall be maintained in servers located in the sovereign territory of the United States of America unless otherwise

As part of the Agreement, the Provider serving as the PII processor agrees to the following Paragraphs such that the Institution can demonstrate compliance with our obligations as the PII controller under Institution policy and other regulations:

agreed in writing by the parties. Institutional Data shall be backed up by any means considered industry standard. Institutional Data shall only be provided to the Provider's resources, including contractors, sub-contracts, non-employees, etc., for the express purpose of fulfilling the rights and responsibilities as outlined in the Agreement and/or this Addendum. Further, Institutional Data and/or records shall not be destroyed unless agreed to in advance by Institution or pursuant to the Agreement and this Addendum. Institution shall have access to its data and/or records upon request during normal business hours. Access to Institutional Data shall include, but shall not be limited to, data extracts, feeds, and/or pulls.

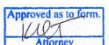
13. **DATA SECURITY:** The Provider shall use commercially reasonable efforts and comply with industry standards when securing all Institutional Data and/or records. Institutional Data shall never leave the secured environment as identified in the Agreement. If a secured environment is not identified in the Agreement, Institutional Data shall be secured pursuant to industry standards. In the event of a data security breach, or any breach in which Institutional Data and/or records may have been exposed to the public, Provider shall contact Institution within 24 business hours, and shall work in association with the Institution to coordinate security processes. Provider will cooperate with the Institution and with law enforcement agencies in any effort to notify injured or potentially injured parties, and such cooperation will be at Provider's expense, except to the extent that the data security breach was caused by the Institution or a third party for which Provider is not responsible under the Agreement. This section sets forth Provider's exclusive liability to Institution for data security breach.

14. **DISASTER RECOVERY:** Should Institutional Data be destroyed, deleted, or otherwise lost, Provider shall notify Institution within 24 business hours and shall provide a timeline of when Institution can expect the resumption of normal business operation by the Provider.

15. **DATA PRIVACY (IDENTITY):** Provider is only permitted to use personal information for the express purposes permitted in their agreements with the Institution. Otherwise, personal information is not released to third parties unless permitted by applicable law, including in instances where the information needs to be disclosed to protect the safety and security of the Institution community or Institution property, or where the Institution is legally compelled by law or judicial order. Provider shall also have in place policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft. Provider shall comply with applicable privacy and identity theft regulations.

16. **DATA PRIVACY (EDUCATION):** If Provider has access to education records as defined under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, Provider will ensure that its use of education records or information from education records (as defined by FERPA) complies with FERPA and any implementing regulations or subsequent amendments thereto. In addition, Provider agrees only to utilize or disclose information from students' education records for the purposes of performing its duties pursuant to this Agreement.

17. **DATA PRIVACY (HEALTH):** If Provider has access to personally identifiable medical record information as defined under the Health Insurance Portability and Accountability act of 1996 (HIPAA), Provider shall vigorously safeguard privileged information. Any personally identifiable medical record information that is provided by the Institution to Provider under this Agreement shall be kept confidential and shall not be further disclosed without prior written approval of the Institution.



INSTITUTION

Signature

Date

PROVIDER

Signature

Date