

Texas State University
Addendum to Agreement

This Addendum (“Addendum”) amends and is hereby incorporated into the agreement entered into by and between _____ and its subcontractors/agents (hereinafter “Service Provider”) and Texas State University on the date of _____ (“Agreement”). This Addendum’s effective date is _____.

Texas State and Service Provider mutually agree to modify the Agreement to incorporate this Addendum to comply with requirements of The Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), various federal export regulations, and other relevant privacy and security laws. If any conflict exists between the terms of the Agreement and this Addendum, the terms of this Addendum shall govern.

Definitions

Covered data and information (CDI) includes all paper and electronic information supplied by Texas State to the Service Provider and by the Service Provider to Texas State. CDI also includes all data that is shared with or entrusted to the Service Provider by individual Texas State students, faculty, administrators, or staff (hereinafter referred to collectively as “Constituents”).

Acknowledgment of CDI Access and Ownership: Service Provider acknowledges that the Agreement allows the Service Provider access to CDI provided by Texas State and its Constituents and that all such CDI remains the intellectual property of the providing party.

Prohibition on Unauthorized Use or Disclosure of CDI: Service Provider agrees to hold CDI in strict confidence. Service Provider shall not use or disclose CDI received from, through, or on behalf of Texas State or its Constituents except as permitted or required by the Agreement or this Addendum, as required by law, or as otherwise authorized in writing by Texas State. Service Provider agrees that it will protect the CDI it receives from, through or on behalf of Texas State or its Constituents according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

Return or Destruction of CDI: Upon termination, cancellation, expiration or other conclusion of the Agreement, Service Provider shall return all CDI to Texas State unless Texas State requests that the CDI be destroyed. This provision shall also apply to all CDI in the possession of the Service Provider’s subcontractors or agents. Service Provider shall complete such return or destruction not less than thirty (30) days after the conclusion of this Agreement. Within such thirty (30) day period, Service Provider shall certify in writing to Texas State that such return or destruction has been completed.

Remedies: If Texas State reasonably determines in good faith that Service Provider has materially breached any of its obligations under this Addendum, Texas State, in its sole discretion, shall have the right to require Service Provider to submit to a plan of monitoring and reporting; provide Service Provider with a fifteen (15) day period to cure the breach; or terminate the Agreement immediately if cure is not possible. Before exercising any of these options, Texas State shall provide written notice to Service Provider describing the violation and the action that Texas State intends to take.

Maintenance of the Security of Electronic Information: Service Provider 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 CDI received from, through, or on behalf of Texas State or its Constituents. These measures will be extended by contract to all subcontractors used by Service Provider.

Service Provider shall store and process all CDI subject to the legal jurisdiction of the United States of America, or under the concurrent jurisdiction of the United States of America and one or more of its states, and free from any foreign legal jurisdiction at all times.

Service Provider shall assure that transmission of CDI between the Service Provider and Texas State or its Constituents shall be encrypted using a protocol acceptable to Texas State (e.g., TLS or SSL 3).

Reporting of Unauthorized Disclosures or Misuse of CDI: Service Provider shall, within one day of discovery, report to Texas State any use or disclosure of CDI not authorized by this Addendum or in writing by Texas State. Service Provider's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Service Provider has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Service Provider has taken or shall take to prevent future similar unauthorized use or disclosure. Service Provider shall provide such other information, including a written report, as reasonably requested by Texas State.

Compliance with Applicable Federal, State, and Local Laws and Regulatory Requirements: Service Provider's shall comply with all federal, state, and local privacy laws or regulations applicable to the CDI provided by Texas State and its Constituents, including but not limited to: the Family Educational Rights and Privacy Act (FERPA) (Pub. L. No. 93-380 (1974), codified at 20 U.S.C. § 1232g); the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. No. 104-191, § 264 (1996), codified at 42 U.S.C. § 1320d; Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. § 160 (2002), 45 C.F.R. § 164 subpts. A, E (2002). In the event of a security breach within the Service Provider's control and covered under the Texas Breach Notification Law (Texas Business and Commerce Code, Chapter §521), Service Provider shall bear all responsibility and expense for complying with the disclosure and notification requirements under that statute.

Assistance with Litigation: Service Provider shall make itself and its employees, subcontractors, or agents assisting Service Provider in the performance of its obligations under the Agreement available to Texas State at no cost to Texas State to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against Texas State, its directors, officers, agents or employees based upon a claimed violation of laws arising out of this Agreement.

Both the Service Provider and Texas State shall facilitate the lawful disclosure of CDI pursuant to any applicable state or federal laws or by request or order of any court or government agency. Provided, however, before making such a disclosure of CDI, Service Provider must give Texas State and all affected Constituents prior written notice of that disclosure, which must identify: the CDI that Service Provider intends to disclose, the law(s), request, or order under which Service Provider believes it is required to make such a disclosure, the persons or entities to whom Service Provider intends to disclose such CDI, and the date on which Service Provider is required to make such a disclosure.

Indemnity: Service Provider shall defend and hold Texas State harmless from all claims, liabilities, damages, or judgments involving a third party, including Texas State's costs and attorney fees, which arise as a result of Service Provider's failure to meet any of its obligations under this Addendum.

IN WITNESS WHEREOF, each of the undersigned has caused this Addendum to be duly executed by the authorized parties in its name and on its behalf.

Texas State Universitys

SERVICE PROVIDER

By:_____ By:_____

Title:_____ Title:_____