

Appendix B: EAB's Modifications to RFP Terms & Conditions



May 31, 2022

Col. Kathleen Tomlin, VCO, VCCO, CUPO, Director
Virginia Military Institute
Procurement Services
330 Parade Avenue, Smith Hall #314
Lexington, VA 24450

re: Requested Modifications to RFP Terms & Conditions

Dear Col. Tomlin,

EAB Global, Inc. ("**Contractor**" or "**Contractor**") is pleased to respond to the Commonwealth of Virginia ("**the Commonwealth**") via the Virginia Military Institute's ("**VMI's**" or "**Institute's**") Request for Proposal(s) (the "**RFP**") for Targeted Marketing and Direct Contact Services (the "**Services**"). This letter contains Contractor's proposed changes to the terms and conditions included in the RFP and we agree to negotiate the terms of any agreement awarded under the RFP ("**Agreement**") in good faith.

1. Contractor requests addition of the following terms, which are specific to the types of Enrollment Services to be provided as requested in the RFP:
 - a. Commonwealth-Provided Data. In connection with the provision of the Services, the Commonwealth, directly or indirectly (including from an End User (defined below)) may provide or make available to Contractor certain data, information, copyrights, trademarks, logos, service marks, specific media (prior to Contractor editing), and other intellectual property (collectively, "**C-P Data**"). The Commonwealth shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness (including having obtained any necessary consents or third party rights) relating to all C-P Data and the sharing of such data, and Contractor does not assume responsibility for unintended, objectionable, inaccurate, misleading, or unlawful C-P Data used in connection with the Services. Unless otherwise required in order to provide the Services, Contractor will have no obligation to archive, back up, or, following the term of the Agreement, retain, C-P Data, nor will Contractor have any liability for any loss or corruption of C-P Data. "**End Users**" means end users of the Services who are not Personnel, including, as applicable, students and prospective students of Commonwealth institutions. For the avoidance of doubt, visitors to a Platform (as defined below) site other than the Institute's website(s) shall not be deemed to be an End User for purposes of the Agreement, and data collected from such visitors shall not be deemed to be C-P Data for purposes of the Agreement.
 - b. Compliance with Laws. Contractor represents, warrants and covenants that the compensation of its employees, subcontractors or other persons who perform any student recruitment activities for the Commonwealth (if any) under the Agreement is and will be in material compliance with Section 487(a)(20) of the HEA (20 U.S.C. § 1094(a)(20)), or any successor provision, and the regulations promulgated thereunder by the U.S. Department of Education (currently located at 34 C.F.R. § 668.14(b)(22)), (the "**Incentive Compensation Rules**"), to the extent applicable. In the event the Incentive Compensation Rules change during the term of the Agreement or the Department of Education revises or issues official guidance concerning such regulations such that, in either case, the calculation and payment of fees as structured under the Agreement is no longer feasible, the parties will promptly negotiate in good faith an amendment to the Agreement to comply with such change and to preserve, as nearly as practicable, the payment provisions and other economic benefits and terms of the Agreement. The Commonwealth and Contractor agree that the Commonwealth is solely

responsible for making final decisions about enrollments and enrollment targets for all campaigns.

The Commonwealth shall be responsible for obtaining and maintaining eligibility for student financial aid under Title IV of the HEA and the rules and regulations thereunder, for obtaining and maintaining all necessary state authorizations and approvals, and for maintaining all institutional and programmatic accreditations necessary to offer its programs. the Commonwealth shall promptly notify Contractor in writing and provide Contractor with copies of key communications from any accreditor or regulatory body in the event it is notified that any the Commonwealth approval, accreditation, or authorization is, or is threatened to be, materially modified, suspended or terminated.

To the extent the Services include marketing activities, Contractor shall send to the Commonwealth for its review and approval a proof of the final template for each communication (e.g., copy of an email and/or direct mail) prior to distribution of such communication. If the Commonwealth discovers any problems after issuing its approval, the Commonwealth will immediately notify Contractor and instruct Contractor on all necessary corrections. If there are any subsequent changes in the marketing communications or campaign details, the Commonwealth will review again according to the above procedure. The Commonwealth shall review all marketing materials created by Contractor for the Commonwealth to ensure that all such marketing materials are accurate, complete and in compliance with all applicable laws, rules and regulations, including, but not limited to, adherence with the U.S. Department of Education's misrepresentation regulations provided at 34 C.F.R. 668, Subpart F, any applicable Federal Trade Commission laws, regulations, or guidelines and all other consumer marketing laws and regulations. The Commonwealth will be solely responsible for: (a) the design of any marketing program created as part of the Services, including the user of the inquiries and Candidates, and its compliance with applicable laws, rules and regulations; (b) the content of any mailings to a prospective student or his/her families for completeness and accuracy.

The Commonwealth agrees to carry out, or cause to be carried out, the processing and awarding of all aspects of the financial aid process in compliance with federal regulations. The Commonwealth will exercise complete control of all aspects associated with the awarding of financial aid, including budget and disbursement schedules. It is understood and agreed that the Agreement does not render Contractor as a "Third Party Servicer" as that term is defined at 34 C.F.R. § 668.2 and Contractor is not subject to the requirements of 34 C.F.R. § 668.23 or 34. C.F.R. § 668.25. the Commonwealth shall not report or characterize Contractor to the U.S. Department of Education or any regulatory agency as such, and Contractor shall not undertake any work pursuant to the Agreement inconsistent with this section.

- c. Cappex Inquiries and Cappex Candidates. Subject to the execution of the Agreement, Contractor may license to the Commonwealth lead information concerning individuals who meet the criteria specified in the applicable Agreement ("**Cappex Inquiries**" or "**Cappex Candidates**", as applicable) solely in connection with and for the purpose of outreach and recruitment services related to the Commonwealth's academic programs and offerings as may be further described in the Agreement, and in compliance with applicable law (the "**Purpose**"). The Commonwealth may not, directly or indirectly, rent, license, sell, or otherwise transfer Cappex Inquiries or Cappex Candidates provided by Contractor to other third-party advertisers or lead aggregators, provided however, that the Commonwealth may share Cappex Inquiries information with its operational service providers who are engaged to assist the Commonwealth in carrying out the Purpose.
- d. Ownership. The Commonwealth hereby grants Contractor authorization to use C-P Data to the extent expressly authorized in these Terms. As between the parties, the Commonwealth owns the C-P Data. the Commonwealth hereby grants Contractor a non-exclusive right and license to use, reproduce, host, reformat, and create derivative works from, publicly display and otherwise exploit all or portions of the C-P Data: (a) in connection with providing the Services; (b) for internal tracking, reliability testing and research purposes; and (c) in a manner that does not identify the Commonwealth for any

lawful purpose in Contractor's discretion. The rights granted in the foregoing clauses (b) and (c) shall be perpetual and shall survive the termination or expiration of this Agreement. As between the parties, Contractor owns all right, title and interest in and to the research, research results, tools, artwork, copy, concepts, methods, analyses, reports, improvements, developments, or other materials or information relating to the Services (including, without limitation, any derivative works from the C-P Data or other materials based on or incorporating C-P Data, except for the C-P Data therein) (collectively, the "**Materials**"), the Services, the know-how, techniques or procedures used or acquired in creating the Materials or performing the Services, and any derivative works of any of the foregoing. Except as stated in these Terms, no right, license, permission, or interest of any kind in the Services or the Materials is intended to be given, transferred to, or acquired by the Commonwealth by the Agreement. The Commonwealth is authorized to use the Services or the Materials only to the extent expressly authorized in these Terms. Upon termination or expiration of the Agreement, the Commonwealth's rights to and its use of the applicable Services and the Materials shall promptly cease, except that the Commonwealth may continue to use any Materials solely for internal purposes. Upon request, the Commonwealth shall return any Materials if the continued use thereof would be prohibited under this Agreement.

To the extent the Commonwealth enrolls in additional Contractor programs (each, an "**Additional Program**"), C-P Data collected or processed by Contractor may be combined with the C-P Data collected or processed hereby as may be expressly directed by the Commonwealth to the extent allowed by law.

- e. Ownership of Certain Materials. The definition of Materials as set forth in the Agreement shall also include (i) the components displayed by Contractor on behalf of the Commonwealth (except the C-P Data therein) on any Platform (as defined below), including without limitation, (i) taxonomy, graphics, icons, logos, buttons and aggregated data compilations; (ii) any photographs, 360 degree panoramas, videos and other media specific to the Commonwealth edited by Contractor whether or not such original media was created by Contractor or supplied by the Commonwealth ("**Edited Media**"); (iii) log files, event data, GPS data, cookies, clear gifs, scripts and other technologies used by Contractor in the course of providing the Services and any related data collected, (iv) any and all software used to provide virtual experiences on any Platform, (v) any and all Cappex Inquiries and Cappex Candidates, and (vi) any trademarks, logos and service marks of Contractor displayed on any Platform. the Commonwealth may not modify, decipher, decompile, disassemble, reverse engineer, distribute, transmit, republish, display or perform any of the Materials (i) except as expressly authorized in the Agreement, or (ii) without Contractor's prior written consent. Contractor may use any ideas, concepts, know-how or techniques regarding improvements or additions to the Services provided by the Commonwealth. For purposes of this Supplement, "**Platform**" shall mean any site to which the Services are posted, including (i) www.eab.com; (ii) www.youvisit.com; (iii) www.cappex.com or www.collegegreenlight.com; (iv) the Commonwealth's website, mobile applications and/or online services; (v) any website or mobile applications hosted by Contractor on behalf of the Commonwealth; and (vi) any Contractor partner or affiliate website.
- f. FERPA. (a) Subject to subsection (b), and to the extent that Contractor receives from the Commonwealth or otherwise has access to, on behalf of the Commonwealth, personally identifiable information from a student education record (collectively, "**Student Records**"), Contractor agrees to maintain such Student Records in accordance with the requirements of the Family Educational Rights and Privacy Act, 20 USC § 1232g, and its implementing regulations, 34 CFR pt. 99, as each may be amended from time to time (collectively "**FERPA**"). (b) the Commonwealth agrees (i) that Contractor is performing for the Commonwealth an institutional service or function for which the Commonwealth would otherwise use its employees, (ii) that the Commonwealth will retain control over all education records provided to Contractor, and (iii) that the Commonwealth is responsible for complying with FERPA, including with respect to the annual notification requirement (34 C.F.R. § 99.7) and with respect to providing Student Records to Contractor.
- g. Limitations on Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL CONTRACTOR OR ITS PERSONNEL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT,

INCIDENTAL, PUNITIVE, OR EXEMPLARY LOSS, DAMAGE, OR EXPENSE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, UNDER ANY THEORY OF LIABILITY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF CONTRACTOR AND ITS PERSONNEL RELATING A PARTICULAR PROGRAM SHALL NOT EXCEED THE AMOUNT PAID BY THE COMMONWEALTH TO CONTRACTOR FOR SUCH PROGRAM IN THE 12 MONTH PERIOD BEFORE THE CLAIM, LIABILITY OR EXPENSE WITH RESPECT TO SUCH PROGRAM AROSE, EXCEPT TO THE EXTENT FINALLY JUDICIALLY DETERMINED TO HAVE RESULTED FROM CONTRACTOR'S BAD FAITH OR INTENTIONAL MISCONDUCT. IN ADDITION, CONTRACTOR WILL NOT BE LIABLE IN RESPECT OF THE FOLLOWING: (A) ANY DECISIONS MADE BY THE COMMONWEALTH AS A RESULT OF THE PERFORMANCE OF THE SERVICES OR AS A RESULT OF ANY TRANSACTIONS MADE IN RELIANCE UPON ANY OF THE MATERIALS; (B) THE COMMONWEALTH'S MISUSE OF THE SERVICES, THE MATERIALS, OR OTHER DATA PROVIDED TO THE COMMONWEALTH IN CONNECTION WITH THE PROGRAM; (C) ANY CLAIMS BY ANY THIRD PARTY IN CONNECTION WITH C-P DATA OR OTHER INFORMATION UNLAWFULLY DISCLOSED TO CONTRACTOR BY THE COMMONWEALTH.

- h. Confidentiality; Reference. Except as required by law or as reasonably necessary in the performance of the Services or as otherwise agreed to by the Commonwealth in the Agreement or in a separate writing, Contractor will keep confidential any and all C-P Data. Notwithstanding the foregoing, the Commonwealth agrees that Contractor shall not be obligated to maintain the confidentiality of C-P Data that is known to Contractor prior to receiving the C-P Data from the Commonwealth or that becomes known (independently of disclosure by the Commonwealth) directly or indirectly from a source other than one having an obligation of confidentiality to the Commonwealth or that is independently developed by Contractor. The Commonwealth agrees that Contractor may collect aggregated statistical data regarding the Commonwealth's use of the Services and provide such aggregated statistical data to third parties.

The Materials are confidential to Contractor and its suppliers, if any. Thus, the Commonwealth shall not disseminate to, or permit the use of, and shall take reasonable precautions to prevent such dissemination or use of, the Materials by any of its Personnel to any third party without the express prior written consent of Contractor. In addition, except as required by law, the Commonwealth shall not disclose the fees charged by Contractor to the Commonwealth to any third party, other than its Personnel or professional services providers (e.g., accountants or legal counsel) who need to know such information in order to provide their respective professional services to the Commonwealth and, in each case, are bound by confidentiality obligations to the Commonwealth. The Commonwealth shall not remove from the Materials any confidential markings, copyright notices and other similar indicia therein and shall not create any derivative works thereof. "**Personnel**" means a party's officers, directors, trustees, employees and agents. Notwithstanding the foregoing, a party may disclose C-P Data and the Materials to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (y) to establish a party's rights under the Agreement, including to make such court filings as it may be required to do.

Contractor may use the Institute's name on a list of organizations in Contractor programs.

- i. Warranties. Contractor represents and warrants that it will provide the Services in a professional and workmanlike manner; the Commonwealth represents and warrants that (a) its signatory is authorized to enter into this Agreement behalf of the Commonwealth, and (b) (i) its provision of C-P Data and (ii) its and its Authorized Users' receipt of and access to the Services (including the Software and C-P Data and other data and information made available through the Software) will not violate any of its obligations to third parties or violate any applicable laws, (c) it shall comply with the Children's

Online Privacy Protection Act (COPPA) and shall not provide C-P Data to Contractor collected by the Commonwealth in violation of COPPA, and (d) it has obtained all necessary third party consents and authorizations to provide the C-P Data and for such C-P Data to be used in the manner contemplated by the Agreement, including consents or authorizations pursuant to FERPA. Contractor makes no warranty, representation, endorsement, or guarantee regarding, and accepts no responsibility for, the quality, content, nature, or reliability of such C-P Data [or any products or services derived therefrom. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND THE MATERIALS ARE PROVIDED "AS IS," AND CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES AND THE MATERIALS AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, AND NON-INFRINGEMENT. CONTRACTOR DOES NOT WARRANT THAT THE SERVICES WILL MEET THE COMMONWEALTH'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS AND CONTRACTOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

- j. Data Processing Addendum. The Data Processing Addendum attached hereto as Exhibit A ("**DPA**") and incorporated herein by reference is applicable to the Agreement if the Processing (as defined in the DPA) of Personal Data (as defined in the DPA) is subject to the General Data Protection Regulation ("**GDPR**"), only to the extent that (i) the Commonwealth is the Controller (as defined in the DPA) of Personal Data and Contractor is a Processor of Personal Data, and (ii) the Services involve the Processing of C-P Data related to individual that at the time of Processing is located in a jurisdiction subject to the GDPR.
2. Given the regulatory and compliance obligations of each party with respect to Advancement Marketing Services, Contractor strongly recommends that all parties that may purchase Advancement Marketing Services under this RFP agree to contract under the terms of the Service Agreement, attached hereto as Exhibit B (the "Service Agreement"), to ensure each party's compliance with all applicable non-profit fundraising regulations.

For all potential Advancement Marketing Service agreements, Contractor requires addition of the following terms which are stated in the attached Service Agreement, and incorporated hereto by reference, which are specific to the types of Advancement Marketing Services to be provided as requested in the RFP:

- a. Section I(B), EAB's Services.
 - b. Article IV, State Registration and Compliance Service Dates.
 - c. Section 2 of the Service Agreement Terms and Conditions, Responsibilities.
 - d. Section 4 of the Service Agreement Terms and Conditions, Proprietary Rights.
 - e. Section 5 of the Service Agreement Terms and Conditions, Warranties and Disclaimers.
 - f. Section 6 of the Service Agreement Terms and Conditions, Limitation of Liability.
 - g. Section 7 of the Service Agreement Terms and Conditions, Confidentiality and Nondisclosure.
 - h. The State Registration Compliance Terms and Conditions in their entirety.
3. In addition, Contractor requests the following modifications to the General Terms and Conditions in the RFP:
 - a. J. Payment. Please add the following language to the end of this provision:

Overdue payments are subject to a late payment charge, which is compounded monthly, calculated at the lesser of (x) a rate of 1% per month or (y) the maximum amount permitted by law. The Commonwealth will be responsible for all costs and expenses incurred by Contractor in collecting any fees or other sums owed by the Commonwealth. If the Commonwealth fails

to pay undisputed amounts in accordance with the Agreement, Contractor shall have the right, in addition to any of its other rights or remedies, to suspend the Services, without liability to the Commonwealth, until such amounts are paid in full.

- b. N. Assignment of Contract. Please replace this provision in its entirety with the following assignment provision, which is mutual:

Assignment. Neither party may assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, assignment by operation of law shall not require consent of the non-assigning party. This Agreement shall be binding upon the parties and their respective successors and permitted assigns.

- c. Z. Availability of Funds. Please strike this provision in its entirety and replace with the following language, which preserves the Commonwealth's right to terminate for lack of funding while providing Contractor with some protections:

The Commonwealth represents and warrants that funds sufficient to meet all financial obligations hereunder for the first year of the contract term have been allocated and are available. Further, Contractor agrees and understands that from the first anniversary of the start date of the contract term, the financial obligations of the Commonwealth to continue hereunder are conditioned upon the appropriation of funds on an annual basis, which is not controlled by the the Commonwealth. In the event that the entities controlling such funding fail to appropriate funds within five percent (5%) of the previous contract year's appropriation and the Commonwealth has determined, in the Commonwealth's sole discretion, that there are insufficient funds available to cover the Commonwealth's obligation for the upcoming year of the contract term under this Agreement, the Commonwealth shall have the right to terminate this Agreement for the upcoming year of the contract term without damage, penalty, cost, or further obligation, provided: (i) the Commonwealth has notified Contractor in writing of its intention to exercise such option at least ninety (90) days in advance of such anniversary of the start date of the contract term; and (ii) the Commonwealth has provided sufficient documentation of such decrease in appropriation of funds.

4. Additionally, Contractor requests the following modifications to the Special Terms and Conditions of the RFP:

- a. 2 Audit. Please add the following language to the end of this provision:

Notwithstanding the foregoing, any audit shall be conducted: (a) with at least ten (10) days' advance notice; (b) at the Commonwealth's expense; (c) during Contractor's normal business hours; and (d) not more than one (1) time per year. Furthermore, Contractor shall have the right to exclude from such audit any of its confidential or proprietary information which was not otherwise provided to the Commonwealth as part of the Services, and the results of any audit shall be subject to the confidentiality provisions of the Agreement or a mutual non-disclosure agreement, if applicable.

- b. 4. Cancellation of Contract. Please delete this provision in its entirety as Contractor cannot agree to a termination for convenience. Contractor proposed the following provision to govern mutual termination rights under this Agreement.

Termination. Except as otherwise provided herein, the Agreement may only be terminated by a party upon written notice to the other party if such other party (a) fails to perform any material obligation required of it under the Agreement, as applicable, and such failure is not cured within 60 days of receipt of written notice thereof, or (b) files a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commences an action providing for relief under bankruptcy laws, files for the

appointment of a receiver, and such petition, action or filing is not dismissed within 60 days of such filing, or is adjudicated a bankrupt concern. Upon an undisputed termination pursuant to clause (a) of the preceding sentence by (i) Contractor, all fees due to Contractor under the Agreement shall promptly become due and payable and (ii) the Commonwealth, Contractor will waive (or refund, as applicable) a pro-rata portion of any prepaid fees for the Services (i.e., fees due for the Services to be performed after the termination date) and, in each case, Contractor will be released from any further obligation to provide the applicable Services.

- c. 5 Confidentiality of Personally Identifiable Information. Please delete "immediately notify VMI" and replace with "notify VMI within 72 hours of discovery of." Please delete "Contractors shall allow VMI to both participate in the investigation of incidents and exercise control over decisions regarding external reporting."

- d. 10 Indemnification If Contractor is to agree to an indemnity, it needs to be standard language tailored to the services and acceptable to our insurance company. Please replace in its entirety as follows:

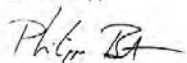
Indemnification. Contractor will indemnify, defend and hold harmless the Commonwealth and its personnel from any and all third party claims, liabilities and expenses arising from any infringement, misappropriation, or other violation by the Services of any United States patent, copyright, trademark, service mark, or trade secret right of a third party; provided that the Commonwealth used the Services in accordance with the terms of the Agreement and consistent with the purpose for which they were provided to the Commonwealth. Contractor shall have no liability for any claim of infringement based on (a) Services which have been modified by the Commonwealth or any third party on the Commonwealth's behalf, (b) the Commonwealth's use of the Services in connection with data, including C-P Data, where use with such data gave rise to the infringement claim, or (c) the Commonwealth's use of the Services with third party software or hardware, where use with such other software or hardware gave rise to the infringement claim. Should the Services become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor may, at its option, (x) obtain the right for the Commonwealth to continue using the Services, (y) replace or modify the Services so they are no longer infringing, or (z) if neither of the foregoing options is commercially reasonable, terminate the right of the Commonwealth to use the affected Services. Upon such termination, Contractor will refund to the Commonwealth, as the Commonwealth's sole remedy for such termination, any fees paid for Services to be provided following the effective termination date. This Section states Contractor's entire liability with respect to any claim of infringement regarding the Services.

- e. 12 Subcontracts. Please delete this provision in its entirety and replace with the following language:

Subcontracts. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall remain fully liable and responsible for the work to be done by its subcontractor and shall assure compliance with all requirements of the contract.

Please do not hesitate to contact us with any specific questions or concerns.

Sincerely,



Philippe Best, Senior Strategic Leader
(800) 899-7227 x20730, PBest@eab.com

DATA PROCESSING ADDENDUM

EXHIBIT A

This Data Processing Addendum ("Addendum") supplements and amends the Agreement with regards to the processing of EU Personal Data. This Addendum applies to Vendor's processing of Personal Data provided by University to Vendor. Except as expressly stated otherwise, in the event of any conflict between the terms of this Addendum, including any policies or appendices referenced herein, and the Agreement, the terms of this Addendum shall take precedence. Capitalized terms not otherwise defined herein will have the meanings given to them in the Agreement.

I. Definitions:

- a. **Data Protection Legislation:** all applicable legislation relating to the protection and processing of Personal Data in any relevant jurisdiction, including (without limitation): the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the ePrivacy Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003, or any other legislation which implements any other current or future legal act of the European Union concerning the protection and processing of personal data and any national implementing or successor legislation), and including any amendment or re-enactment of the foregoing;
- b. **Personal Data:** has the meaning given to it in the Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which Vendor is a processor in connection with the performance of its obligations under the Agreement; and
- c. **"Data Subject", "processing and process", "Supervisory Authority", "controller", "processor" and "appropriate technical and organisational measures"** shall have the meanings given to them in the Data Protection Legislation.

II. Instructions

- a. Vendor will comply and will procure that its employees, agents and subcontractors comply with their respective obligations under the Data Protection Legislation and will not do or omit to do anything that would cause University to breach their obligations under the Data Protection Legislation.
- b. The parties acknowledge and agree that for the purposes of the Data Protection Legislation, University is the controller and Vendor is the processor of the Personal Data. Each Program Order Form sets out the scope, nature and purpose of processing by Vendor, the duration of the processing and the types of personal data and categories of Data Subject. In no circumstances shall Vendor be entitled to process the Personal Data for its own purposes.

III. Obligations on University

In relation to the processing of Personal Data, University confirms, represents and warrants that it acts as a controller and that it shall:

- a. comply with Data Protection Legislation when processing Personal Data, and shall only give lawful instructions to Vendor;
- b. rely on a valid legal basis under Data Protection Legislation in order to process the Personal Data and share the Personal Data with Vendor, including obtaining Data Subjects' consent if required or appropriate under Data Protection Legislation;
- c. obtain appropriate consents from Data Subjects for the purposes of direct marketing activities (whether conducted by the Company or the Customer) and provide the necessary opportunity for Data Subjects to opt-out of such processing, in accordance with applicable Data Protection Legislation;
- d. provide appropriate notice to the Data Subjects regarding the processing of Personal Data, in a timely manner and in accordance with the requirements of the applicable Data Protection Legislation;
- e. take reasonable steps to ensure that Personal Data is accurate, complete and up to date, is limited to what is necessary for the purposes of the processing and is kept in a form which permits identification of Data Subjects for no longer than is necessary for the purposes for which the Personal Data is processed, unless a longer retention period is required or permitted under applicable EU or Member State law;
- f. implement appropriate technical and organisational measures to ensure, and to be able to demonstrate that the processing of Personal Data is performed in accordance with applicable Data Protection Legislation; and
- g. cooperate with Vendor to fulfil their respective data protection compliance obligations in accordance with Data Protection Legislation.

IV. Obligations on Vendor

In processing Personal Data on behalf of University, Vendor acting as processor shall:

- a. only act on the instructions of University as set out in the Agreement or as otherwise documented by University, unless any EU or Member State law requires otherwise, in which case, Vendor shall promptly notify University of such legislative requirement before processing University's Personal Data (unless Vendor is barred from notifying University under any EU or Member State law);
- b. implement and maintain at all times during the term of the Agreement appropriate technical and organisational measures to protect University's Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and against all other unlawful forms of processing, in each case, taking into account applicable requirements under the Data Protection Legislation, and shall continue to comply with them during the term of the Agreement;
- c. grant access to the Personal Data to persons authorized to process the Personal Data, including but not limited to: (i) employees who require access to the Personal Data to enable Vendor to perform its obligations under the Agreement; and (ii) subject to Clause IV(e), Vendor contractors, agents, outsourcers, and approved subcontractors who require access to the Personal Data to enable Vendor to perform its obligations under the Agreement (the "**Authorized Persons**") and, shall in each case, ensure such Authorized Persons have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality in respect of the Personal Data;
- d. transfer the Personal Data to, or process the Personal Data in, any country outside the European Economic Area where necessary to perform its obligations under the Agreement, and shall do so in accordance with Data Protection Legislation. University hereby authorizes such cross-border transfer of Personal Data and confirms, represents and warrants that it shall comply with any applicable requirements under Data Protection Legislation in respect of such transfers;
- e. not engage any sub-processor of the Personal Data without a general written authorization of University, attached hereto as Attachment A, and Vendor shall inform University of any intended changes concerning the addition or replacement of other sub-processors, to give University the opportunity to object;
- f. as requested by University, provide reasonable assistance to University (at University's cost) with responding to any request from a Data Subject, and shall provide reasonable assistance to University in relation to University's compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, data protection impact assessments and consultations with Supervisory Authorities;
- g. at University's written request, Vendor shall, and shall instruct all Authorized Persons to, (at University's election), delete or return, to the extent technically possible, all Personal Data to University (and delete all existing copies), unless it is necessary for Vendor to retain one copy of the Personal Data to comply with any EU or Member State law; and
- h. maintain and make available to University, on University's request, all information necessary to demonstrate its compliance with this Addendum and allow for audits and inspections by University or University's designated auditor on reasonable written notice.