

MIAMI UNIVERSITY SIDE LETTER AGREEMENT

This Miami University Side Letter Agreement (this “Side Letter”) is made by and between Miami University (“Miami”); and _____ (“Company”).

WHEREAS, Miami and Company are parties to an agreement titled _____ (the “Underlying Agreement”), which may include certain supplemental agreements directly or indirectly referenced within the Underlying Agreement or that are required to be accepted by Miami as a condition of using Company’s goods or services, including, without limitation, end-user license agreements, click-wrap agreements, and terms and conditions contained in invoices or receipts (the “Supplemental Agreements,” and together with the Underlying Agreement, the “Agreement”); and

WHEREAS, Miami and Company wish to modify the Agreement pursuant to the terms and subject to the conditions contained in this Side Letter.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto agree as follows:

1. Incorporation of Side Letter; Entire Agreement. The terms and conditions contained in this Side Letter, including the above recitals, are hereby deemed incorporated into the Agreement. This Side Letter and the Agreement, including any schedules or exhibits attached thereto, constitute the entire understanding and agreement of the parties with respect to the subject matter hereof and thereof, and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties. For avoidance of doubt, each reference in the Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein,” or words of like import will mean and be a reference to the Agreement as amended by this Side Letter, and any integration clause contained in the Agreement is hereby modified to incorporate this Side Letter.

2. Order of Precedence. In the event of a conflict between the terms and conditions contained in this Side Letter and the terms and conditions contained in the Agreement, the terms and conditions contained in this Side Letter shall control. In the event of a conflict between this Side Letter and the Agreement, Company hereby agrees that all references in the Agreement to an order of precedence that would make this Side Letter subordinate to the Agreement are to be ignored.

3. Effective Date. This Side Letter shall be effective as of the effective date of the Underlying Agreement (the “SL Effective Date”), and shall terminate upon the expiration or earlier termination of the Underlying Agreement.

4. Amendment. Company hereby acknowledges and agrees that Miami, as a public university, is not permitted to agree to certain contract terms. The parties wish to amend and modify the Agreement as follows:

(a) All references in the Agreement requiring Miami to indemnify, defend, or hold harmless Company or any other party are hereby deleted in their entirety, and shall be completely null and void. For avoidance of doubt, any requirement of Company to indemnify or hold harmless Miami shall remain an obligation of Company in the Agreement.

(b) All references in the Agreement to governing law, choice of jurisdiction, and choice of venue outside of the State of Ohio are hereby deleted in their entirety, and shall be completely null and void.

(c) If the Agreement requires Miami to represent, warrant, covenant, or otherwise certify that Miami is in compliance with the General Data Protection Regulation (EU) 2016/679, all such requirements are hereby deleted in their entirety, shall be completely null and void, and shall be replaced with the following:

To the extent applicable to Miami University, and subject to all federal, state, and local laws of the United States of America, Miami University will use good faith efforts to comply with any applicable requirements of the General Data Protection Regulation (EU) 2106/679.

(d) All references in the Agreement requiring Miami to resolve claims, actions, lawsuits, or other similar disputes (“Disputes”) using mediation, arbitration, or any other form of alternative dispute resolution, or that require Miami to pay Company’s court costs, attorneys’ fees, or other expenses related to Disputes are hereby deleted in their entirety, and shall be completely null and void.

5. Public Records Act. Company hereby acknowledges that Miami, as a public university, is subject to the Ohio Public Records Act (Ohio R.C. 149.43 *et seq.*). Miami is obligated to promptly produce public records when requested by the public. Nothing in the Agreement shall prevent Miami from fully complying with the Ohio Public Records Act. Company hereby authorizes Miami to disclose copies of this Side Letter, the Agreement, and all invoices, receipts, and purchase orders related to the Agreement pursuant to a request made under the Ohio Public Records Act without first providing Company notice.

6. Company Confidential Information. The terms and conditions contained in this **Section 6** shall only apply if the Agreement requires Miami to keep certain of Company’s information confidential or if Company segregated confidential information pursuant to instructions contained in a request for proposal by Miami.

(a) Except as otherwise provided in the last sentence of **Section 5** of this Side Letter, if Miami receives a public records request pursuant to the Ohio Public Records Act that seeks the disclosure of Company’s confidential information, then Miami will use commercially reasonable efforts to provide Company telephonic, electronic, or written notice of Miami’s receipt of the request prior to disclosing the requested information so that Company has the opportunity to seek appropriate legal action to prevent the disclosure. If Company fails to promptly pursue protective legal action, then Miami shall disclose the requested confidential information without having breached this Side Letter or the Agreement.

(b) Company acknowledges and agrees that (i) Miami has sole discretion in determining whether a record is a “public record” under the Ohio Pubic Records Act; (ii) Miami is under no obligation to determine whether any of Company’s information qualifies for an exemption under the Ohio Public Records Act; and (iii) Company shall bear all costs associated with pursuing any protective legal action to prevent the disclosure of its confidential information.

(c) If Company pursues any protective legal action to protect the disclosure of its confidential information, then Company hereby agrees to indemnify and hold harmless Miami for any losses, claims, expenses, or costs arising out of or related to third party claims alleging that Miami has violated the Ohio Public Records Act.

7. Miami Personal Information.

(a) As used in this Side Letter, “Personal Information” means (i) any information that Company or its personnel collects, processes, receives, or otherwise obtains from or on behalf of Miami or

any of its employees or students that does or can identify a specific student or employee of Miami, or by or from which a specific student or employee may be identified, contacted, or located, such as an individual's name, address, social security number, *etc.*, and any other information relating to such identified or identifiable individual; (ii) all "nonpublic personal information," as defined under the Gramm-Leach-Bliley Act (15 U.S.C. 6801 *et seq.*) ("GLB"); (iii) "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d) ("HIPAA"); (iv) "education records" as defined under the Family Educational Rights and Privacy Act (20 U.S.C. 1232g *et seq.*) ("FERPA"); and (v) "personal data" as defined under the European Union General Data Protection Regulation 2016/679 ("GDPR"). To the extent that Company has access to "education records," it is deemed a "school official" (as such terms are defined under FERPA).

(b) If Company uses Miami's Personal Information in the performance of the Agreement, then Company hereby agrees (i) to use Personal Information only for the purposes of performing its obligations under the Agreement; (ii) to not disclose or otherwise make available Personal Information to any third party; provided that Company may disclose Personal Information to its employees and legal advisors who have a "need to know," who have been apprised of the restrictions contained in this paragraph, and who are themselves bound by confidentiality requirements at least as restrictive as those set forth herein; and (iii) to promptly notify Miami in the event Company becomes aware of any loss or disclosure of any Personal Information.

8. Compliance with Laws. Company shall comply with all federal, state, and local laws, ordinances, regulations, and orders that are applicable to the operation of its business, or that are otherwise required for its performance under this Side Letter and the Underlying Agreement. Without limiting the generality of the foregoing, Company shall comply with all applicable privacy laws, including GLB, HIPAA, FERPA, and GDPR.

9. Governing Law. This Side Letter and the Agreement, and all related documents, including all exhibits and attachments to any of the foregoing documents, and all matters arising out of or relating to this Side Letter and Agreement, whether sounding in contract, tort, statute, or otherwise, are governed by, and construed in accordance with, the laws of the State of Ohio, without giving effect to any jurisdiction's conflict of laws provisions.

10. Forum Selection. The parties agree that all matters arising out of or relating to this Side Letter and the Agreement, whether sounding in contract, tort, statute, or otherwise, shall be subject to the sole and exclusive jurisdiction of the state and federal courts of competent jurisdiction located in the State of Ohio. The parties agree that the foregoing forum selections have been concluded as a result of arms-length negotiations and are not overly onerous or burdensome to either party.

11. Sovereign Immunity. The parties agree that nothing in this Side Letter or the Agreement shall be construed as a waiver of the sovereign immunity of Miami and/or the State of Ohio beyond the waiver provided in Ohio Revised Code 2743.02.

12. Non-Discrimination; HB 476. During the term of this Side Letter, Company agrees not to discriminate on the basis of religion, race, color, creed, national or ethnic origin, sex, age, disability, political affiliation, gender identity or expression, sexual orientation, pregnancy, or status as a veteran or member of the military. Company acknowledges that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Side Letter.

13. Severability. If any term or provision of this Side Letter is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Side Letter or invalidate or render unenforceable such term or provision in any other jurisdiction.

Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Side Letter so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14. Modification; Waiver. This Side Letter and the Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Side Letter shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15. Counterparts. This Side Letter may be executed in any number of counterparts, each of which is an original, and all of which together constitute only one agreement between the parties. Delivery of an executed counterpart of this Side Letter by facsimile, electronic mail, or other electronic means has the same effect as delivery of an executed original.

16. Survival. Sections 4, 5, 6, 7, 9, 10, 11, 16, and 18 of this Side Letter shall indefinitely survive the expiration or earlier termination of the Agreement.

17. Effect of Side Letter. Except as otherwise set forth in this Side Letter, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms.

18. Miami Marks. Nothing in the Agreement or this Side Letter shall be construed as conferring to Company any rights to use in advertising, publicity, or otherwise any of Miami's trademarks, service marks, logos, trade names, names, or brand indicia (collectively, "Marks"). Company shall not use any Marks for any reason or in any manner without prior written consent from Miami's Manager of Trademarks and Licensing (see <http://www.miamioh.edu/ucm/trademarks-licensing/>). If Company obtains Miami's consent to use the Marks, Company hereby acknowledges and agrees that Miami shall remain the sole and exclusive owner of and retain all right, title and interest in and to its Marks and the goodwill associated therewith. Unless otherwise specified in writing by Miami, all permissions to use the Marks shall expire upon the expiration or earlier termination of the Agreement.

19. Accessibility. The terms and conditions contained in this **Section 17** shall only apply if the Agreement involves Miami's purchase of software, software as a service, or similar products and services from Company ("Technology").

(a) If applicable, Company will use reasonable efforts to ensure that the Technology complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194; and the Web Content Accessibility Guidelines ("WCAG") 2.0, level AA (collectively, the "Accessibility Requirement").

(b) If the Technology is not compliant with the Accessibility Requirements, then Company shall (i) use reasonable efforts to resolve such non-compliance based on a mutually agreeable timeline; and (ii) provide reasonable assistance to Miami in developing a plan to provide disabled students with Equally Effective Alternative Access. The term "Equally Effective Alternative Access" has the

meaning set forth in Miami's Accessible Technology Policy, which is available at <https://blogs.miamioh.edu/miamipolicies/?p=5162>.

(c) If the Technology does not meet the Accessibility Requirements, or if Miami cannot provide Equally Effective Alternative Access to a student, then Company hereby agrees that Miami may terminate the Agreement for Miami's convenience, without further liability to Company.

[Signature Page Follows]

MIAMI UNIVERSITY SIDE LETTER AGREEMENT

Signature Page

IN WITNESS WHEREOF, the parties have duly executed this Side Letter on the dates set forth below to be effective for all purposes as of the SL Effective Date.

MIAMI:

Miami University,
a body politic and corporate established and
existing under the laws of the State of Ohio

By: _____

Name: _____

Title: _____

Date: _____

COMPANY:

By: _____

Name: _____

Title: _____

Date: _____