

## **Information Technology Services Consulting Services Agreement Attachment**

The Information Technology Services Consulting Services Agreement Attachment is added to, part of and subject to this Agreement, and the parties agree as follows:

**1. Definitions.** (a) “Documentation” means user and system documentation, manuals, licenses or warranties for each Deliverable; and (b) “System” means the information technology products, software, services, platform, Documentation and materials provided by Consultant to Loyola in this Agreement.

**2. Representations and Warranties.** Consultant represents and warrants to Loyola, intending that Loyola rely thereon in entering into this Agreement, that: (a) Consultant is authorized to transfer or license the Deliverables to Loyola because all Deliverables are either (i) original work or material created and owned solely by Consultant, contain no material from and are not copied from copyrighted sources; or (ii) are validly licensed or transferred from the owner; (b) the Deliverables do not infringe on any patent, copyright, trademark, trade secret, intellectual property or other right or proprietary interest of any other person or entity; (c) any Deliverables will be suitable for the intended purpose, and Consultant will furnish any Documentation; (d) the System will conform in all material respects to the Specifications, which will include the design, technical and functional capabilities, look and feel, other attributes of performance which the System will achieve; and (e) the System will not contain any spyware, Trojan horses, worms, viruses or other surveillance destructive or disabling devices, programs or other code not contemplated by this Agreement. Consultant will pass, and hereby passes, through to Loyola (such that Loyola is the beneficiary of) any rights Consultant obtains under warranties from any third party contractor with respect to the System. This Section 2 will survive the termination or expiration of this Agreement.

### **3. Third Party Licenses.**

**a. Non-System Deliverables.** Consultant will, at its sole cost, obtain and supply any third party licenses required to use any non-System Deliverables. Consultant hereby grants to Loyola, its affiliates, subsidiaries, their employees, students or anyone acting on their behalf, a perpetual, irrevocable, royalty free, nonexclusive, enterprise wide license, to use, modify, copy, update and maintain any third party materials, services and deliverables required to use with any non-System Deliverables. Such licenses are deemed to be licenses of rights to intellectual property as defined in United States Bankruptcy Code §365(n). The licenses set forth in this Section 3(a) will continue after termination of this Agreement, except if terminated due to Loyola’s breach. Consultant will not have any rights of attribution in connection with the Deliverables, which will contain appropriate Loyola proprietary rights notices, if directed by Loyola.

**b. System Deliverable.** If the System requires the use of third party hardware, software, licenses or devices (“Third Party Licenses”), Consultant will, at Consultant’s expense, maintain the rights to use the Third Party Licenses and procure any rights necessary for Loyola and the Authorized Loyola Users’ use of the Third Party Licenses in connection with use of the System. If such Third Party Licenses are no longer available or supported, or if Consultant cannot obtain the rights described in this Section 3(b), Consultant will modify the System or procure replacement software for the Third Party Licenses to ensure uninterrupted functionality of the System. Without limiting anything in this Agreement: (i) Consultant will accurately and completely transfer and migrate any applicable Third Party Licenses in connection with any System; and (ii) Consultant will provide Loyola with applicable Third Party Licenses technical support by telephone, email or Internet, as requested by Loyola.

**4. System License and Authorization.** Consultant, at no cost to Loyola other than as expressly provided in this Agreement, grants to Loyola and Authorized Loyola Users (defined below) a perpetual, irrevocable, worldwide, non-exclusive license to use the System. Consultant will provide authorization and access to, and will permit, Loyola and the Authorized Loyola Users to use the System. For the purpose of this Agreement,

“Authorized Loyola User” means Loyola employees, officers, trustees and other individual users identified by Loyola in Loyola’s sole discretion.

**5. Maintenance, Availability and Functions.** Consultant will: (a) provide all maintenance and repairs to the System requested by Loyola and all ordinary, routine and regular preventive maintenance and repairs to the System; (b) provide all applicable updates to the System; (c) provide all applicable integrations of the System; (d) provide all adjustments and modifications to the System; (e) keep the System in good order and working condition; and (f) designate in writing to Loyola an individual(s) who will serve as Loyola’s representative with respect to the System and technical support. Consultant will ensure that the System is available and useable twenty four (24) hours a day, seven (7) days a week. Consultant will provide Loyola and the Authorized Loyola Users with accessible, available and appropriate help desk personnel or other personnel in the United States to assist Loyola and the Authorized Loyola Users with any issues, questions, problems or concerns with the System. Upon notice from Loyola or any other source that the System is not performing properly, fully and correctly, that the System contains a virus or disabling device, that the System is defective or malfunctioning or that the System is otherwise unavailable or unusable, Consultant will, without additional charge, take prompt corrective action.

**6. Setup and Configuration.** Consultant is responsible for the setup and configuration of the server hardware and software, telecommunications hardware and software, security software and other hardware and software that is reasonably necessary to operate, maintain and update the System in accordance with this Agreement. Under no circumstances will the System include advertisements, commercial or otherwise. Consultant will allocate to Loyola and each Authorized Loyola User a login, code and/or password, as applicable, that will be used by Loyola and each Authorized Loyola User with respect to the System. Consultant will be responsible, through the System, for authentication of any and all Authorized Loyola Users of the System. The System, as may be updated from time to time, shall be browser, device and computer neutral and thus compatible with the latest versions of all Internet browser software, devices and computers.

**7. Updates.** Consultant will use updated commercially available technologies for the System for the duration of this Agreement, as such technologies may change from time to time, at no additional cost to Loyola or any Authorized Loyola User. During the term of this Agreement, Consultant will promptly provide Loyola and the Authorized Loyola Users with any applicable updates, upgrades and enhancements to the System at no additional cost to Loyola or the Authorized Loyola Users. Consultant shall provide Loyola with thirty (30) days prior written notice of any material change in the System. Loyola may terminate this Agreement within thirty (30) days of receipt of such notice. Upon such termination, Consultant shall refund to Loyola a pro rata portion of any fee paid by Loyola attributable to the remaining period of the term of this Agreement.

**8. Hosting Facilities.** Consultant will host the System and provide storage space on, and access to, a server and backup systems thereof, and all related services in order to host, operate, maintain and update for Loyola and the Authorized Loyola Users the System for on-demand access by Loyola and the Authorized Loyola Users. All facilities used to store and process data will employ commercial best practices, including without limitation appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Consultant will use industry-standard and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods. The hosting facility will maintain appropriate, effective and adequate disaster recovery and business continuity plans, data back up and data protection procedures and protocols, hosting facility, infrastructure and system security procedures and protocols and update, upgrade and enhancement procedures and protocols that are all regularly, continually, thoroughly and properly assessed, validated, monitored, tested and updated.

**9. Use of Loyola Information Systems.** Loyola information systems are the property of Loyola and will be used only in accordance with Applicable Laws and applicable policies, rules and regulations of Loyola. Consultant is responsible for the inappropriate use of Loyola information systems in contravention of Applicable Laws and applicable policies, rules and regulations of Loyola. Loyola’s confidential information includes vendor applications (“Loyola System”) to which Consultant may have access from time to time, with such access being

determined by Loyola in Loyola's sole discretion. Consultant is prohibited from disclosing any Loyola System information.

**10. Evaluation and Reports.** Consultant will meet regularly (at least once per quarter) with authorized Loyola administrators to evaluate the System and to consult on current and future System trends. At least once per calendar year, Loyola will conduct a formal evaluation of Consultant. Consultant will provide Loyola with any reports on System, for any period of time, as may be requested by Loyola from time to time.

**11. Data Security.** Consultant and Consultant Personnel will: (a) follow Loyola's applicable policies concerning data security and the protection of Personal Information (defined below); (b) secure and use appropriate physical and technical safeguards to prevent any unauthorized access to, use of, or disclosure of Personal Information; (c) correct any feature of vulnerability in their systems or, if permitted by Loyola, in Loyola Systems running Consultant applications that have allowed unauthorized access to any data or information accessible from or contained therein or that may allow or contribute to allowing any unauthorized access to such information in the future; (d) comply with all Applicable Laws concerning data security and the protection of Personal Information; and (e) comply with all applicable standards and publications concerning data security and the protection of Personal Information, including without limitation the ISO 27000 series publications and the NIST Framework for Improving Critical Infrastructure Cybersecurity. In the event of a violation, breach or failure relating to any Personal Information, Consultant will immediately notify (and in no event later than twenty four (24) hours after Consultant becomes aware of the violation, breach or failure) Loyola. Consultant further agrees that it will be responsible for providing, at its expense, credit report monitoring or other reasonable protections, as determined by Loyola, for individuals affected by the unauthorized access to, use of, or disclosure of their Personal Information that is attributable to an act, error, or omission of Consultant or any Consultant Personnel. For purposes of this Agreement, "Personal Information" means any personally identifiable information about any person and any information protected by any Applicable Laws concerning privacy or industry standards. Consultant agrees that, to the extent it receives or otherwise has access to information or records relating to Loyola's students, it will comply with the requirements of FERPA, relating to the confidentiality of such information and records. Consultant agrees that it will keep the student information and/or records of Loyola strictly confidential and will not disclose such information and/or records to any third party without the prior written consent of Loyola. If Consultant receives a lawfully issued subpoena or court order seeking any information or records that would include student information and/or records it has obtained from Loyola, Consultant agrees to promptly notify Loyola so that Loyola will have a reasonable amount of time to take such actions as Loyola may deem appropriate or as required by Applicable Law. Upon termination of this Agreement, Consultant agrees to either destroy any student information or records it has obtained from Loyola in a manner that completely protects the confidentiality thereof or return any such information and records to Loyola.

**12. Data Storage.** All data will be stored on infrastructure located solely within the United States. Consultant will at all times comply with all Applicable Laws regarding import and export control, including without limitation all Export Administration Regulations, and will not permit foreign nationals from Cuba, Iran, North Korea, Sudan, Syria or any other embargoed or sanctioned countries from time to time to use the System. In the event of a violation or breach of, or other noncompliance with, an Applicable Law regarding import and export control, Consultant will immediately notify Loyola and, at Consultant's expense and in consultation with Loyola, cause such violation, breach or noncompliance to end and be remedied as appropriate in the best interests of Loyola.

**13. Data Retrieval and Retention.** Loyola retains the right to use the System to access and retrieve data stored on Consultant's infrastructure at Loyola's sole discretion. Consultant will retain data until Loyola deletes them or for an alternative time period, as determined by Loyola in Loyola's sole discretion from time to time. Using appropriate and reliable storage media, Consultant will regularly back up data, without any loss of integrity or other loss or damage, and retain such backup copies for a minimum of thirty (30) days, unless Loyola requires a different period, as determined by Loyola in Loyola's sole discretion from time to time. Upon Loyola's request, Consultant will supply Loyola with a certificate indicating the records destroyed, the date destroyed, and the method of destruction used. Consultant will retain logs associated with Loyola activity for a minimum of thirty (30) days, unless Loyola requires a different period, as determined by Loyola in Loyola's sole discretion from

time to time. All backup copies described in this Section 13 will be available to Loyola in a complete and secure (i.e., encrypted and appropriately authenticated) download readable file of in XML or other equivalent format, without any loss of integrity or other loss or damage, including without limitation all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format.

**14. Data Files at Termination.** Upon request by Loyola in writing made at any time before or within thirty (30) days after the effective date of any termination of this Agreement, Consultant will make available to Loyola a complete and secure (i.e. encrypted and appropriately authenticated) download readable file of data in XML or other equivalent format, without any loss of integrity or other loss or damage, including without limitation all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. With respect to data that is destroyed and/or returned in accordance with this Agreement, Consultant will certify to Loyola that Consultant has done so, unless Applicable Law prevents Consultant from returning all or part of such data. In that case, Consultant will guarantee the confidentiality of the data and will not actively process data anymore. This Section 14 will survive the termination and expiration of this Agreement.

**15. Audit.** Consultant will have an independent third party security audit performed at least once a year. The audit results and Consultant's plan for addressing or resolving of the audit results will be shared with Loyola promptly after Consultant's receipt of the audit results. The audit will minimally check for buffer overflows, open ports, unnecessary services, lack of user input filtering, cross site scripting vulnerabilities, SQL injection vulnerabilities, and any other well-known vulnerabilities. Upon Loyola's request, Consultant, at Consultant's sole expense, will provide Loyola with Consultant's Service Vendor Control (SOC) 2 Type II Report (or substantially similar report in the event the SOC 2 Type II Report is no longer the industry standard).

**16. Training.** Consultant will train Loyola personnel designated by Loyola to use and maintain the System and any editing tools and any upgrades thereto, at a location designated by Loyola.

**17. Limitation on Liability.** Loyola will have no obligations, liabilities or responsibilities (for payment or otherwise) to Consultant for the System, except as set forth in this Agreement, and Loyola will not be liable or responsible for any loss, damage or injuries caused by Consultant, a third party, or a force majeure. The individuals signing this Agreement on behalf of Loyola assume no personal liability for the obligations assumed by Loyola. In no event does or will Loyola agree to any disclaimer, limit or cap on Consultant's liability for Consultant's acts, errors or omissions or anything else, whether in this Agreement or otherwise. Consultant is liable and responsible for the acts, errors and omissions of Consultant Personnel and for ensuring that the Consultant Personnel comply with this Agreement. In no event will Loyola be liable to Consultant for any indirect, consequential, special or punitive damages arising under this Agreement. Loyola will not be liable for the actions, errors or omissions of the Authorized Loyola Users or any other users of the System, except for Authorized Loyola Users who are employees of Loyola acting in the scope of their employment on behalf of Loyola and at Loyola's direction. Consultant will not limit Consultant's liability to Loyola, the Authorized Loyola Users or any of Loyola's students, affiliates, agents, employees, officers, directors or trustees with respect to the System or otherwise. This Section 17 will survive the termination or expiration of this Agreement.

**18. Response to Reproducible Errors.** In addition to the foregoing Acceptance Test, if Loyola demonstrates to Consultant a reproducible error in the System, including a failure of the System to operate in accordance with this Agreement, including Specifications or any Documentation, Consultant will at no cost to Loyola promptly correct such error and deliver for such correction by providing updates, revisions, necessary patches, fixes, work arounds, modifications and replacements necessary for the System to function and perform in accordance with this Agreement, including Specifications and Documentation. Notwithstanding the foregoing, in the event the error is critical, including any error which interferes with a significant function of the System, Consultant will devote all necessary resources on a twenty four hour basis to resolve the error as quickly as possible.

**19. Miscellaneous.** Consultant may not enter into terms of use agreements, end user license agreements (“EULA”), or other agreements or understandings with users of the System who are not Loyola’s authorized signatories. In the event that Consultant enters into any licenses, terms of use agreements, EULA or other agreements or understandings, whether verbal or in writing, with Authorized Loyola Users, such as by requiring to click an on screen indicator indicating acceptance, agreement or similar, before allowing the user to download software or to access the System, such agreements will be null, void and without effect, and this Agreement will apply. Loyola will not be bound by, and any terms and conditions contained in or set forth in any shrinkwrap, clickwrap, browsewrap or other materials or on any website used by Consultant to deliver the System or other Deliverables will be null, void and without effect, even if a representative of Loyola clicked on an on screen indicator indicating acceptance, agreement or similar.

**20. *[Note to ITS: Determine whether to include PCI and/or GDPR provisions (e.g., if any personal data is being processed by the Consultant outside of the US or if any personal data will come from outside the US).]***