# EXECUTIVE SUMMARY

**Pursuant to Broward College Policy 6Hx2-1.14 and Procedure A6Hx2-1.14, Dr. Donald Astrab exercised the authority delegated by the Board to execute the non-standard agreement (purchase order) with NG Web Solutions LLC for the annual software license in the Student Financial Services Department by using the bid waiver information technology. Fiscal Impact: $17,445.00 (Cumulative $139,2740.00)**

**Presenter(s):** Janice Stubbs, Vice President of Student Services

**What is the purpose of this contract and why is it needed?** This agreement is for annual software licenses to utilize Dynamic Forms and Scholarship Manager. This software has been used by the College for many years to manage the scholarship applications and all financial aid and student finance forms.

**What procurement process or bid waiver was used and why?** Bid waiver exception for information technology resources was used per FLDOE 6A-14.0734 and College Procedure A6Hx2-6.34, because this is a software license.

**Is this a budgeted expenditure from the budget established at the last June Board of Trustees meeting?** Yes, this expense is for year 2024-2025.

**What fund, cost center and line item(s) were used?** CC0128, FD201, CC0573, FD100, 65500.

**Has Broward College used this vendor before for these products or services?** Yes.

**Was the product or service acceptable in the past?** Yes.

**Was there a return on investment anticipated when entering this contract?** Yes.

**Was that return on investment not met, met, or exceeded and how?** Yes, this software has enabled offices across campuses to utilize electronic forms for many processes, eliminating the need for students to complete paper forms, thus improving efficiency and ease of applications for students. The Scholarship Manager has assisted in allowing 91% or more of the foundation scholarships to be awarded to students in a timely manner.

**Does this directly or indirectly feed one of the Social Enterprise tactics and how?** Yes, it indirectly feeds into the financial security tactic by easing required processes for students, thus removing barriers to enrollment and facilitating foundation scholarships to be awarded to students to assist in tuition coverage.

**Did the vendor amend Broward College's legal terms and conditions** [to be answered by the Legal Office] **if the College's standard contract was used and was this acceptable to the Legal Office?4**

The General Counsel's office has reviewed the agreement and any deviation to the College's standard terms has been deemed acceptable.

**FISCAL IMPACT:**

Description: $17,445 CC0573, BU301, FD100, PG000411 and CC0128 BU301, FD201, PG000174

| | | |
|---|---|---|
| **06/25/24** | **CC0573 · Student Financial Services** | **($8,125.00)** |
| | Dynamic Forms & SSO | |

| TOTAL: | ($17,445.00) |

Janice Stubbs

Janice Stubbs, Vice President of Student Services          5/21/2024

APPROVAL PATH: 12181: NG Web Solutions LLC FY2024-2025 - Annual Software License

## Workflow

Edit View    Add Work Item

| Stage | Reviewer | Description | Due Date | Status | |
|---|---|---|---|---|---|
| 1 | Tara Jones | AVP Review | | ✅ Completed | 📝 |
| 2 | Alina Gonzalez | Review | | ✅ Completed | 📝 |
| 3 | Raj Mettai | Review | | ✅ Completed | 📝 |
| 4 | Janice Stubbs | VP Review | | ✅ Completed | 📝 |
| 5 | Natalia Triana-Aristizabal | Contracts Coordinator | | ✅ Completed | 📝 |
| 6 | Zaida Riollano | Procurement Approval | | ✅ Completed | 📝 |
| 7 | Christine Sims | Budget Departmental Review | | ✅ Completed | 📝 |
| 8 | Rabia Azhar | CFO Review | | ✅ Completed | 📝 |
| 9 | Legal Services Review Group | Review and Approval for Form and | | ✅ Completed | 📝 |
| 10 | Electronic Signature(s) | Signatures obtained via DocuSig 📧 | | ⏳ Pending | |
| 11 | Natalia Triana-Aristizabal | Contracts Coordinator | | ⏳ Pending | |
| 12 | **Board Clerk** | Agenda Preparation | | ⏳ Pending | |
| 13 | District Board of Trustees | Meeting | 06/25/24 01:00 PM | ⏳ Pending | |

**nextgen** WEB SOLUTIONS

## APPLICATION SERVICE PROVIDER AGREEMENT

THIS APPLICATION SERVICE PROVIDER AGREEMENT ("**Agreement**") is made as of _____, 2024 by and between **NG Web Solutions, LLC.**, a Nebraska corporation with offices at 6821 Southpoint Drive, Suite 220, Jacksonville, FL 32216 ("**NG Web Solutions**"), and the customer identified below ("**Customer**").

| | |
|---|---|
| **Customer Contact Information:** | |
| Institution Name: | Contact: |
| District Board of Trustees of Broward College, Florida | Title: |
| Address: | Phone: |
| | E-Mail: |
| **Billing Contact Information (if different):** | |
| Name: _____ | Contact: Karol Cowan |
| | Title: _____ |
| Address: _____ | Phone: _____ |
| _____ | Fax: _____ |
| _____ | E-Mail: AccountsPayable@broward.edu |
| | bmitchel@broward.edu |
| | ksanchez@broward.edu |

Customer desires to obtain a license to access and use in its own business operations certain proprietary software of NG Web Solutions (the "**Software**") as identified below and further defined in Section 1 of the attached Terms and Conditions). Through an application service hosted by NG Web Solutions, NG Web Solutions will provide access to the Software through a web site. This Agreement, including the Terms and Conditions attached hereto and incorporated herein by reference, shall govern the provision of all application services by NG Web Solutions to Customer.

| Software | Annual License Period | Annual ASP Fee | Term (# of years) | Total |
|---|---|---|---|---|
| **Dynamic Forms** | 07.01.2024 – 06.30.2025 | $7,625 | 1 year | $7,625 |
| **Scholarship Manger** | 07.01.2024 – 06.30.2025 | $9,320 | 1 year | $9,320 |
| **Scholarship Manger: Single Sign On** | 07.01.2024 – 06.30.2025 | $500 | 1 year | $500 |

*QUOTE VALID FOR 60 DAYS FROM: 05/08/2024

IN WITNESS WHEREOF, the parties by their authorized representatives have entered into this Agreement as of the Effective Date.

| NG WEB SOLUTIONS, LLC. | CUSTOMER: District Board of Trustees of Broward College, Florida |
|---|---|
| Signed: _(signature)_ | Signed: _Donald Astrab_ |
| Name: Tary A. Haines | Name: Donald Astrab |
| Title: CEO | Title: Interim President |
| Date: 6/11/2024 | Date: 6/11/2024 |

Version: May, 2008

**nextgen**
WEB SOLUTIONS

## TERMS AND CONDITIONS

**1. DEFINITIONS.**

**1.1** "**ASP Services**" means the Software application hosting services as listed in the cover sheet above and described in and provided by NG Web Solutions pursuant to this Agreement.

**1.2** "**Confidential Information**" means all trade secrets, business and financial information, computer software, machine and operator instructions, business methods, procedures, know-how, and other information that relates to the business or technology of either party and is marked or identified as confidential, or disclosed in circumstances that would lead a reasonable person to believe such information is confidential. The Software and Documentation shall be considered NG Web Solutions's Confidential Information, notwithstanding any failure to mark or identify it as such.

**1.3** "**Customer Content**" means any data or content that is submitted by Customer and collected and stored by the Software.

**1.4** "**Documentation**" means the user's manuals and other documentation made available to Customer by NG Web Solutions with respect to the Software, but excluding any marketing or promotional materials.

**1.5** "**End User**" means each Customer employee or student who is permitted to access and/or use the Software under the terms of this Agreement.

**1.6** "**Intellectual Property Rights**" means any and all existing or future worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights, and other proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing.

**1.7** "**NG Web Solutions Site**" means the web site located at a unique URL to be provided by NG Web Solutions to Customer where End Users may access and use the Software.

**1.8** "**Services**" means collectively the ASP Services, support, maintenance, installation and set-up services listed in the cover sheet above and/or described in and provided by NG Web Solutions pursuant to this Agreement.

**1.9** "**Software**" means the specific NG Web Solutions software that Customer will access and use in connection with this Agreement, and any modified, updated, or enhanced versions of such software in object code form, including, without limitation, all modifications, Updates and Upgrades that may become part of the Software pursuant to this Agreement.

**1.10** "**Update**" means a new version of the Software that contains patches, bug fixes, error corrections, minor enhancements and other maintenance releases, but that does not contain major enhancements or significant new functionality. Updates may be designated by a change in the version number of the Software to the right of the decimal (e.g., Version 2.1 to Version 2.2).

**1.11** "**Upgrade**" means a new version of the Software that contains major enhancements or significant new functionality, as determined by NG Web Solutions in its sole discretion. Upgrades are generally designated by a change in the version number of the Software to the left of the decimal (e.g., Version 3.7 to Version 4.0).

**2. SERVICES.**

**2.1 Provision of Services by NG Web Solutions.** Subject to the terms and conditions of this Agreement, NG Web Solutions will use commercially reasonable efforts to provide the ASP Services to Customer. In addition, NG Web Solutions will use commercially reasonable efforts to ensure that the Software is accessible through the NG Web Solutions Site over normal network connections, excepting downtime due to necessary maintenance and troubleshooting. NG Web Solutions reserves the right to change the URL of the NG Web Solutions Site at any time.

**2.2 Support and Maintenance.** Subject to Customer's timely payment of all applicable fees, NG Web Solutions will make Updates and Upgrades available for the Software when and if made available for general release in NG Web Solutions's sole discretion. NG Web Solutions will provide telephone support services during NG Web Solutions's regular business hours for Software related questions. If Customer desires additional services, including, without limitation, training or customization services, NG Web Solutions may provide such services pursuant to its standard rates and terms of service.

**3. LICENSE GRANT AND RESTRICTIONS.**

**3.1 License Grant.** Subject to the terms and conditions of this Agreement (including, without limitation, Customer's obligation to pay all Services fees), NG Web Solutions grants to Customer, during the Term (defined below) of this Agreement and on a "per campus" basis, a non-exclusive, non-transferable, non-sublicensable license to enable End Users to access and use the Software as made available to Customer and such End Users through the NG Web Solutions Site solely for Customer's internal business purposes and solely in accordance with the Documentation.

**3.2 Restrictions.** Customer shall not, and shall not permit any End User or third party to: (a) modify, adapt, alter, translate, or create derivative works from the Software or the Documentation; (b) merge the Software with other software; (c) allow any third party access to or use of the Software; (d) reverse engineer, decompile, disassemble, or otherwise attempt to alter or derive the source code for the Software; or (e) otherwise use or copy the Software or the Documentation except as expressly permitted under this Section 3. Customer shall limit access and use of the Software for each license hereunder to that specific campus listed in the cover sheet above. The Software and Services shall not be used to collect credit card information. NG Web Solutions assumes no liability with respect to such use or claims related thereto.

**4. PAYMENT TERMS; TAXES.**

**4.1 Payment Terms.** Customer shall pay to NG Web Solutions the Services fees in the amounts set forth in the cover sheet above, including, without limitation, the applicable ASP Services fees for all usage of the Software by End Users in accordance with the terms of this Agreement. Unless otherwise agreed to by the parties, all Services fees, including the annual ASP Services fees, will be invoiced by NG Web Solutions in full prior to the Effective Date. All payments will be due in full within thirty (30) days after the date of NG Web Solutions's invoice. Payment of all fees shall be made in United States dollars either: (a) at NG Web Solutions's address as indicated in this Agreement or at such other address as NG Web Solutions may from time to time indicate by proper notice hereunder, or (b) by wire transfer to a bank and account number designated by NG Web Solutions. Interest shall accrue at the lesser of one and

one-half percent (1½%) per month or the maximum rate permitted by law on all overdue payments until paid in full. Should Customer fail to make any payment when due, NG Web Solutions, in its discretion, shall be entitled to revoke or suspend Customer's rights to access the Software and/or suspend the provision of other services. All payments received by NG Web Solutions are non-refundable except as otherwise expressly provided herein. At the end of the Initial Term, NG Web Solutions may increase the Services fees up to the applicable services fees set forth in NG Web Solutions's then-current price list.

**4.2     Taxes.** Customer will be responsible for and will indemnify and hold NG Web Solutions harmless from payment of all taxes (other than taxes based on NG Web Solutions's income), fees, duties, and other governmental charges, and any related penalties and interest, arising from the payment of any fees or any amounts owed to NG Web Solutions under this Agreement. Customer will make all payments of fees to NG Web Solutions free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to NG Web Solutions will be Customer's sole responsibility, and Customer will provide NG Web Solutions with official receipts issued by the appropriate taxing authority, or such other evidence as NG Web Solutions may reasonably request, to establish that such taxes have been paid.

**5.     OWNERSHIP.**

**5.1     NG Web Solutions.** The Software, Documentation, Services, all proprietary technology utilized by NG Web Solutions to perform its obligations under this Agreement, and all Intellectual Property Rights in and to the foregoing, are the exclusive property of NG Web Solutions, its licensors and suppliers. Any rights not expressly granted to Customer hereunder are reserved by NG Web Solutions, its licensors and suppliers.

**5.2     Customer.** Customer retains all right, title and interest in and to the Customer Content. NG Web Solutions will only use Customer Content to perform the Services under this Agreement.

**6.     CUSTOMER CONTENT.** Customer will be solely responsible for providing all Customer Content. Customer grants to NG Web Solutions all necessary proprietary rights and licenses in and to such Customer Content solely as necessary for NG Web Solutions to provide the Services for Customer. Customer will not provide Customer Content that: (a) infringes or violate any intellectual property rights, publicity/privacy rights, law or regulation; (b) contain any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or personal information; or (c) is materially false, misleading or inaccurate. NG Web Solutions may take remedial action if Customer Content violates this Section 6, however, NG Web Solutions is under no obligation to review Customer Content for accuracy or potential liability. Customer will defend, indemnify and hold harmless NG Web Solutions from any and all losses, costs, damages, liabilities or expenses (including without limitation reasonable attorneys' fees) incurred or arising from any claim by a third party arising out of the Customer Content.

**7.     Warranty Disclaimers.** THE SERVICES AND SOFTWARE ARE PROVIDED "**AS IS**", WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AND NG WEB SOLUTIONS SPECIFICALLY     DISCLAIMS     ALL     IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT AND THAT NO WARRANTIES ARE MADE BY ANY OF NG WEB SOLUTIONS'S LICENSORS OR SUPPLIERS.

**8.     INFRINGEMENT CLAIMS.** NG Web Solutions will defend, at its own expense, any action against Customer brought by a third party to the extent that the action is based upon a claim that the Software infringes any copyrights or misappropriates any trade secrets, and NG Web Solutions will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer: (a) promptly notifying NG Web Solutions in writing of such action; (b) giving NG Web Solutions sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at NG Web Solutions's request and expense, assisting in such defense. Notwithstanding the foregoing, NG Web Solutions will have no obligation under this Section 8 or otherwise with respect to any infringement claim based upon: (1) any use of the Software not in accordance with this Agreement; (2) any use of the Software in combination with products, equipment, software, or data not supplied by NG Web Solutions if such infringement would have been avoided without the combination with such other products, equipment, software or data; or (3) any modification of the Software by any person other than NG Web Solutions or its authorized agents or subcontractors. THIS SECTION 8 STATES NG WEB SOLUTIONS'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS OR ACTIONS.

**9.     LIMITATION OF LIABILITY.** IN NO EVENT WILL NG WEB SOLUTIONS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, OR FOR ANY LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF NG WEB SOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NG WEB SOLUTIONS'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SOFTWARE AND SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT PAID TO NG WEB SOLUTIONS BY CUSTOMER FOR THE SERVICES PROVIDED UNDER THIS AGREEMENT IN THE PRIOR SIX (6) MONTH PERIOD. Customer acknowledges that these limitations reflect the allocation of risk set forth in this Agreement and that NG Web Solutions would not enter into this Agreement without these limitations on its liability, and Customer agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. In addition, NG Web Solutions disclaims all liability of any kind of NG Web Solutions's licensors and suppliers.

**nextgen** WEB SOLUTIONS

## 10. TERM AND TERMINATION.

**10.1 Term.** The initial term of this Agreement for each specific Software listed in the cover sheet above shall commence on the Commencement Date listed in the cover sheet and shall extend for the number of years listed in the cover sheet (the "**Initial Term**"). The Initial Term shall be automatically renewed for successive one (1) year periods (each a "**Renewal Term**"), unless either party indicates its intention not to renew this Agreement for the specific Software at least sixty (60) days prior to the end of the then-current term. The Initial Term and each Renewal Term are collective referred to as the "**Term**."

**10.2 Termination.** Either party may terminate this Agreement if the other party breaches any material provision of this Agreement and does not cure such breach (provided that such breach is capable of cure) within thirty (30) days (ten (10) days for failure to pay) after being provided with written notice thereof. Notwithstanding the foregoing, NG Web Solutions may terminate this Agreement immediately upon written notice if Customer, in any manner, breaches Section 3 (License Grant and Restrictions) or Section 11 (Confidentiality).

**10.3 Effects of Termination.** Upon expiration or termination of this Agreement for any reason: (a) any amounts owed to NG Web Solutions under this Agreement (including the total amount of minimum payments remaining in the then-current Term) before such termination or expiration will be immediately due and payable, (b) all licensed rights granted in this Agreement will immediately cease to exist; and (c) Customer must promptly discontinue all use of the Software and return or destroy, all copies of the Documentation in Customer's possession or control and certify in writing that it has fully complied with these requirements. Sections 1 (Definitions), 3.2 (Restrictions), 4 (Payment Terms; Taxes), 5 (Ownership), 7 (Warranty Disclaimers), 9 (Limitation of Liability), 10.3 (Effects of Termination), 11 (Confidentiality) and 12 (General Provisions) will survive termination of this Agreement for any reason.

## 11. CONFIDENTIALITY.

**11.1 Protection.** The party receiving Confidential Information ("**Receiving Party**") from the other party ("**Disclosing Party**") will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**11.2 Exceptions.** The Receiving Party's obligations under Section 11.1 above with respect to any Confidential Information of the Disclosing Party will terminate if and when the Receiving Party can document that such information: (a) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving

Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party may disclose Confidential Information of the Disclosing Party to the extent that such disclosure is: (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, *provided that* the Receiving Party notifies the Disclosing Party of such required disclosure in writing prior to making such disclosure and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

## 12. PRIVACY AND SECURITY.
Data collected and stored by NG Web Solutions pursuant to this Agreement is considered the property of the licensed institution. The data will not be used by NG Web Solutions in any manner not approved by the licensed institution and will not be shared with any third parties without prior consent of the Institution. Access to the data shall be restricted except to the extent that NG Web Solutions associates must access the data to provide service to the institution. In any event, NG Web Solutions maintains physical, procedural, and electronic safeguards to protect data from being accessed by unauthorized third parties.

## 13. GENERAL PROVISIONS.

**13.1 Compliance with Laws and Export Regulations.** Customer shall comply with all applicable laws and regulations concerning its use of the Software, including without limitation all applicable export and import control laws and regulations. Customer will not use the Software or Documentation for any purpose in violation of any applicable laws. Customer agrees to defend, indemnify, and hold harmless NG Web Solutions from and against any violation of any applicable laws or regulations by Customer or any of its agents, officers, directors, or employees.

**13.2 Audits and Inspections.** Upon written request from NG Web Solutions, Customer shall furnish NG Web Solutions with a certificate signed by an officer of Customer stating that the Software is being used in accordance with the terms and conditions of this Agreement. NG Web Solutions shall have the right, upon reasonable prior written notice to Customer and at a mutually agreeable time and place (but no more than ten (10) days after notice from NG Web Solutions), to have an independent audit firm selected by NG Web Solutions review Customer's relevant records and inspect Customer's facilities to verify compliance with the terms and conditions of this Agreement (an "**Inspection**"). Any such Inspection shall be conducted during normal business hours in a manner so as not to unreasonably interfere with Customer's normal operations, and NG Web Solutions shall maintain any records or other information obtained as the result of an Inspection as Confidential Information of Customer. The Inspection will be conducted at NG Web Solutions's expense, unless the Inspection reveals that Customer has failed to materially comply with the terms and conditions of this Agreement, in which case Customer will reimburse NG Web Solutions for all reasonable costs and expenses incurred by NG Web Solutions in connection with such Inspection.

**13.3 Customer Reference.** NG Web Solutions shall have the right to reference and list Customer's name and logo on NG Web Solutions' customer list and website. NG Web Solutions shall also have the right to share Customer's contact information

**nextgen**
WEB SOLUTIONS

with a prospective customer to enable the prospect to inquire about Customer's experience with the Services and the Software.

**13.4** **Assignment.** Customer may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party without NG Web Solutions' prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. NG Web Solutions shall have the right to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

**13.5** **U.S. Government End Users.** If Customer is a branch or agency of the United States Government, the following provision applies. The Software and Documentation are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are provided to the Government (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-3 (JUN 1995).

**13.6** **Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, electronic facsimile (fax), or certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address for each party first set forth above, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner.

**13.7** **Governing Law and Venue.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Florida without reference to its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement shall be brought in a federal or state court in Jacksonville, Florida, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**13.8** **Remedies.** Except as otherwise expressly provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the Software contains valuable trade secrets and proprietary information of NG Web Solutions, that any actual or threatened breach of Sections 3 or 11 may constitute immediate, irreparable harm to NG Web Solutions for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**13.9** **Waivers.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**13.10** **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

**13.11** **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

**13.12** **Entire Agreement.** This Agreement, including the cover sheet and any exhibits hereto, constitute the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. The parties agree that this Agreement shall apply independently to each Software product listed in the cover sheet above.

**BROWARD COLLEGE**

# BROWARD COLLEGE
## SUPPLEMENTAL ADDENDUM - SOFTWARE

and possession thereof is soley on BC's behalf. BC may access and copy any BC Data in Vendor's possession at any time, and Vendor shall faciliate such access and copying promptly after BC's request.

**12. Termination for Convenience.** BC may terminate the Agreement upon thirty (30) days' notice to Vendor, with no further obligation to Vendor other than to pay for any amounts owing prior to the effective date of termination. BC shall not be liable for any early termination charges and shall not be entitled to any refund of prepaid amounts.

**13. Annual Appropriation Contingency.** The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event funding is not approved for any subsequent fiscal year, this Agreement shall terminate upon expenditure of the current funding, notwithstanding other provisions to the contrary. BC shall notify Vendor in writing after the adoption of the final budget for each subsequent fiscal year if funding is not approved.

**14. State of Florida Public Entity Contracting Prohibitions.** Vendor represents, warrants and covenants that it is not currently and, throughout the term of this Agreement shall not be, ineligible for the award or continuation of this Agreement under Sections 287.133, 287.134 and 287.135, Florida Statutes. Vendor understands and accepts that this Agreement may be void, voidable or subject to immediate termination by BC if the representation, warranty and covenant set forth above is violated. BC, in the event of such termination, shall not incur any liability to Vendor for any work or materials furnished.

**15. BC's Sovereign Immunity.** Nothing in the Agreement shall act, or be construed, to increase or alter BC's liability for tort claims beyond the waiver of immunity limits set forth in Section 768.28, Florida Statutes

**16. Governing Law and Other Legal Matters.** The laws of the State of Florida shall govern all aspects of the Agreement without regard to any conflict-of-law principles. The exclusive venue of any legal actions arising out of the Agreement shall be Broward County, Florida. BC is entitled to the benefits of sovereign immunity, including but not limited to immunity from suit in federal court. Any provisions in the Agreement requiring arbitration and/or mediation of matters arising out of or relating to the Agreement or altering

the time to bring lawsuits or to make claims under the Agreement shall be of no force and effect and are hereby deleted. Any provisions resulting in the Agreement's causing a default under another agreement or otherwise triggering rights and responsibilities under another agreement between the parties shall be of no force and effect and are hereby deleted.

**17. Confidentiality Obligations.** Vendor shall comply with any and all applicable state and federal laws and BC policies and procedures governing the use and/or safekeeping of BC Data, including but not limited to the Family Educational Rights and Privacy Act, laws governing personally identifiable information, the Florida the Health Insurance Portability and Accountability Act, the Gramm-Leach-Bliley Act, the Federal Trade Commission's Red Flags Rule, and amendments thereto (collectively, "Privacy Laws"). In the Agreement involves Vendor's access to education records, Vendor is hereby designated a school official and will comply with all legal requirements applicable thereto. If the Agreement involves Vendor's access to, any protected health information, as that term is or may be defined by state or federal law, BC and Vendor shall enter into a separate business-associate agreement that shall govern the use of the protected health information.

In the event Vendor is required by subpoena, law, or other judicial or administrative process to disclose BC Confidential Information, Vendor shall (i) provide BC with prompt notice thereof; (ii) consult with BC on taking steps to resist or narrow such disclosure; (iii) furnish only that portion of BC Confidential Information that is responsive to the request; (iv) comply with the requirements of all Privacy Laws; and (v) reasonably cooperate with BC in any attempt that BC may make to obtain an order or other reliable assurance that confidential treatment shall be accorded.

Upon termination of the Agreement or upon request by BC, Vendor shall promptly return all BC Confidential Information. This section shall not be subject to any limitations of liability provisions in the Agreement. Vendor agrees to include all such terms and conditions in this section in any subcontractor or agency contracts providing services on behalf of Vendor, provided this requirement is not intended to authorize any subcontracting or agency unless permitted hereby.

**BROWARD COLLEGE**
**SUPPLEMENTAL ADDENDUM - SOFTWARE**

**1. Incorporation by Reference.** The District Board of Trustees of Broward College, Florida ("BC") and the undersigned ("Vendor") hereby incorporate this Supplemental Addendum–Software ("Addendum") into the agreement between BC and Vendor ("Agreement"). If this Addendum conflicts with the Agreement terms, this Addendum shall control.

**2. Payment.** Vendor shall submit bills for compensation for goods, services, and/or expenses in detail sufficient for a pre- and post-audit. Invoices may be submitted via email, facsimile or U.S. mail. The time at which payment will be due from BC will be approximately thirty (30) days from receipt of an undisputed invoice, acceptance of deliverables, and upon satisfaction of the BC conditions that are detailed herein. In lieu of all provisions in the Agreement pertaining to pentalites for late payment, if BC does not issue payment within approximately thirty days of receipt of a proper invoice, BC shall pay Vendor an interest penalty from the date the invoice was due until it was paid at the rate established pursuant to Section 55.03(1), Florida Statutes, if the interest exceeds one dollar.

**3. Taxes.** BC is immune and/or exempt from the payment of taxes and shall not be responsible for the payment thereof. BC shall provide an appropriate exemption certificate.

**4. Travel Expenses.** If BC is reimbursing travel expenses, Section 112.061, Florida Statutes, applies to those reimbursements. In order to be reimbursed, travel expenses must be expressly stated in the Agreement or otherwise approved by an authorized BC official in writing in advance.

**5. No Automatic Renewals or Extensions.** Provisions resulting in the automatic renewal or extension of the term of the Agreement shall be of no force and effect and are hereby deleted. To renew or extend the term of the Agreement, the parties shall enter into an amendment.

**6. Compliance with Laws.** Vendor represents, warrants and covenants as of the date of the Agreement and throughout the term of the Agreement that the software complies with all applicable legal requirements, including, but not limited to, the Americans with Disaiblities Act and related regulations.

**7. Vendor Intellectual Property Indemnification.** Vendor shall indemnify, defend, and hold harmless BC and its officers, directors, board of trustees, agents, assigns, and employees from liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, for any claim or lawsuit brought alleging infringement of any intellectual property right arising out of the rights granted by Vendor to BC under the Agreement. This section shall not be subject to any limitations of liability provisions in the Agreement. This paragraph shall survive the expiration or early termination of the Agreement.

**8. Announcements and Press Statements.** No party shall, except with prior written consent of the other party on each occasion, make any press or media announcements concerning the Agreement or use the name, logos, or trademarks of any other party, or any version, abbreviation, or representation of them, in any advertising or other form of publicity or fundraising without the written permission of the party whose name, logo, or trademark is sought for use. In the case of BC, permission must be granted by its Vice President, Communications and Community Relations or that position's designee, and in the case of the other party, permission must be granted by its _____COO_____ or that position's designee.

**9. Relationship of the Parties.** Each of the parties is an independent contractor and nothing in the Agreement shall designate any of the employees or agents of one party as employees or agents of the other.

**10. Use of BC Information Not Allowed.** Pursuant to the Agreement, Vendor may access, maintain, collect, record, organize, structure, store, retrieve, adapt, alter, use, process or otherwise handle information owned or held by BC and may create information from or with such existing information owned or held by BC (collectively, the "BC Data"). Vendor shall not have the right to use BC Data (whatever the medium) except to perform its obligations under the Agreement. Without limitation of the foregoing, Vendor shall not give any third party access to BC Data without BC's written permission except as expressly authorized in the Agreement or this Addendum.

**11. BC Rights in Information.** BC retains all rights to, title to, and interest in BC Data, and Vendor's use

Supplemental Addendum - Software

SBL 03/16/2021

**BROWARD COLLEGE**

**BROWARD COLLEGE
SUPPLEMENTAL ADDENDUM - SOFTWARE**

**18. Vendor's Confidential Information / Public Records Law.** BC is subject to the public records laws of Florida, including records retention requirements, and any provisions in the Agreement pertaining to confidentiality obligations on the part of BC are hereby deleted and shall be of no force and effect. Vendor shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should Vendor assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon Vendor and Vendor shall bear all costs and fees related to the same.

If Vendor meets the definition of "contractor" under Section 119.0701, Florida Statutes, in addition to other Agreement requirements provided by law, Vendor must comply with public records laws, and shall:

(a) Keep and maintain public records required by BC to perform the service.
(b) Upon request from the BC, provide the BC with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if Vendor does not transfer the records to the BC.
(d) Upon completion of the Agreement, transfer, at no cost, to the BC all public records in possession of Vendor or keep and maintain public records required by the BC to perform the service. If Vendor transfers all public records to the BC upon completion of the Agreement, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the Agreement, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the BC, upon request from the BC's custodian of public records, in a format that is compatible with the information technology systems of the BC

(e) IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT BC AT (954) 201-7639, LEGALSERVICES@BROWARD.EDU, OR 111 EAST LAS OLAS BOULEVARD, #523, FORT LAUDERDALE, FL 33301.

IN ADDITION, VENDOR ACKNOWLEDGES THAT BC CANNOT AND WILL NOT PROVIDE LEGAL ADVICE OR BUSINESS ADVICE TO VENDOR WITH RESPECT TO ITS OBLIGATIONS UNDER THIS SECTION. VENDOR FURTHER ACKNOWLEDGES THAT IT WILL NOT RELY ON BC OR ITS COUNSEL TO PROVIDE SUCH BUSINESS OR LEGAL ADVICE, AND THAT VENDOR IS HEREBY ADVISED TO SEEK BUSINESS/LEGAL ADVICE WITH REGARD TO PUBLIC RECORDS MATTERS ADDRESSED BY THIS AGREEMENT. VENDOR ACKNOWLEDGES THAT ITS FAILURE TO COMPLY WITH FLORIDA LAW AND THIS AGREEMENT WITH RESPECT TO PUBLIC RECORDS SHALL CONSITUTE A MATERIAL BREACH OF THIS AGREEMENT AND GROUNDS FOR TERMINATION.

**19. Miscellaneous.** Any terms and/or conditions in the Agreement on the following subject matters are hereby deleted in their entirety and shall be of no force and effect: (i) grants of exclusivity by BC to Vendor; (ii) restrictions on the hiring of Vendor's employees; and (iii) attorneys' or collection-fees provisions.

**By signing below, Vendor's authorized representative agrees to incorporate this Addendum into the Agreement, and hereby executes this Addendum as of the date set forth below.**
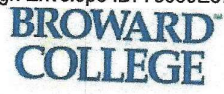
VENDOR: Clickwhere Solutions, LLC

By: _____
Name: JIM GRACE
Title: COO
Date: 05/15/2024

**BROWARD COLLEGE**

**BROWARD COLLEGE
SUPPLEMENTAL ADDENDUM - SOFTWARE**