



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 agreement with Respondus, Inc. for the lockdown browser and monitor applications used in most computer classrooms at the College to monitor online tests, utilizing the bid waiver (single source). Fiscal Impact: Approximately \$28,255.00 (cumulative \$112,355.00).

Presenter(s): Raj Mettai, Chief Information Officer

What is the purpose of this contract and why is it needed? This is a three-year agreement with Respondus, Inc. for the lockdown browser and monitor applications used in most computer classrooms at the College to monitor online tests.

Respondus 4.0 supports the creation and management of assessments that can be both printed or published to multiple learning management systems. It also supports the importing of Word documents and other external files, which is a critical feature for faculty to adopt online testing. Respondus 4.0 includes integration with the Respondus Test Bank Network, a unique partnership between Respondus and more than 30 leading publishers in higher education. Respondus 4.0 users that adopt a participating textbook have access to thousands of publisher test banks in a format that works with Respondus. This tool makes working with publisher content fast, easy and seamless for instructors.

LockDown Browser is a custom browser that locks down the testing environment within the online course, preventing students from accessing other digital resources during online exams. Lockdown Browser will not allow students to print, copy, open other applications or files, or access other websites during online tests. Lockdown Browser supports Windows, Mac and iOS. This product is currently installed College-wide and is used by various professors at the College for test taking.

The Lockdown Browser application is tightly integrated with multiple learning management systems (LMS), including Desire to Learn (D2L) and supports iOS devices, whereas other similar test taking browser applications do not. Other "locked browser" solutions are limited to a specific LMS, or must be used with proprietary testing platforms.

What procurement process or bid waiver was used and why? The College used the exemption provided for the single source bid waiver in accordance with the Florida Administrative Code (FL DOE 6A-14.0734(2)(e) and College Procedure 6AHx2-6.34. The Respondus products cannot be purchased through any resellers. Respondus is the only vendor that can sell their product.

Is this a budgeted expenditure from the budget established at the last June Board of Trustees meeting? Yes.

What fund, cost center and line item(s) were used? FD108, CC0288, GL65500.

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? By using this cost-effective product, the instructor can use the software to monitor and ensure students cannot browse to other sites or applications while taking tests.

Does this directly or indirectly feed one of the Social Enterprise tactics and how? Not applicable.

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?

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: Approximately \$28,255.00 from BU202, FD108, CC0288, PG000164. The estimated cumulative total is \$112,355.00.

07/01/24	CC0288 · Technology Fee Plan FY2024-25	(\$9,190.00)
07/01/25	CC0288 · Technology Fee Plan FY2025-26	(\$9,415.00)
07/01/26	CC0288 · Technology Fee Plan FY2026-27	(\$9,650.00)
		TOTAL: (\$28,255.00)

Raj Mettai
Raj Mettai, Chief Information Officer

5/6/2024

Donald Astrab
Donald Astrab, VP, Academic Operations, Analytics, & Comm

5/6/2024


























APPROVAL PATH: 12118 Respondus Lockdown and Monitor (2024-2027)

 **Workflow**

 Synchronize Routing

 Edit View

 Add Work Item

Stage	Reviewer	Description	Due Date	Status	
1	Alina Gonzalez	Review & Approve		 Completed	
2	Raj Mettai	CIO Review		 Completed	
3	Donald Astrab	Chief Operating Officer		 Completed	
4	Natalia Triana-Aristizabal	Contracts Coordinator		 Completed	
5	Zaida Riollano	Procurement Approval		 Completed	
6	Christine Sims	Budget Departmental Review		 Completed	
7	Rabia Azhar	CFO Review		 Completed	
8	Legal Services Review Group	Review and Approval for Form and		 Completed	
9	Electronic Signature(s)	Signatures obtained via DocuSig 		 Completed	
10	Pending Counter-Signature(s)	Review		 Completed	
11	Natalia Triana-Aristizabal	Contracts Coordinator		 Completed	
12	Board Clerk	Agenda Preparation		 Pending	
13	District Board of Trustees	Meeting	06/25/24 01:00 PM	 Pending	

Respondus

PO Box 3247
Redmond, WA 98073

INVOICE / SO

ACCOUNT # | 951712128

BILL TO

The District Board of Trustees
of Broward College, Florida
Accounts Payable
6400 NW 6 Way 3rd Floor
Fort Lauderdale, FL 33309

SHIP TO

Broward College
Alina Gonzalez
3501 SW Davie Road
Davie, FL 33314

DATE

5/1/2024

TERMS

Net due 7/15/24

INVOICE / SO #

SO-39316

PO NUMBER

QUANTITY	ITEM	DESCRIPTION	PRICE EACH	AMOUNT
	Renewal Respondus	Respondus 4.0 Campus-wide License Renewal [Term: 8/1/2024 -7/31/2025]	2,745.00	2,745.00
	Renewal LDB	LockDown Browser Campus-wide License Renewal [Term: 8/1/2024 -7/31/2025]	6,445.00	6,445.00

Questions? email: ar@respondus.com

This PO is accepted conditional to the Broward College Supplemental Addendum Software signed between the parties 8/21/2023 and the Amendment thereto, effective 8/1/2024. Respondus explicitly rejects terms and conditions provided in purchase orders or similar forms provided by Customer, unless otherwise agreed to in writing by both parties. The invoice amount must be paid in full without any set-off, deductions, or withholding for or on account of any taxes, duties, or charges. If deductions are required, Respondus must be notified in advance and a revised invoice will be provided.

Total \$9,190.00

Federal Tax ID: 91-2050620 All prices listed in US Dollars

Please remit by ACH/Wire to:

Bank: Chase, 8010 164th Ave NE, Redmond, WA 98052 USA
Account Name: Respondus Inc.
Account No: 357508651
Routing No: 325070760
SWIFT Code: CHASUS33



**RESPONDUS AMENDMENT TO THE AGREEMENT BETWEEN
RESPONDUS, INC. AND THE DISTRICT BOARD OF TRUSTEES OF BROWARD COLLEGE, FLORIDA**

This contract amendment (“Amendment”) to the Terms of Use/End User License Agreement - LockDown Browser Last Updated: January 10,2022 and the Respondus Monitor Institution License and Terms of Use Last Updated: March 30, 2023, together with the Broward College Supplemental Addendum – Software signed 08/21/2023 (“Addendum”) (separately and together the “Agreement”) between Respondus, Inc. (“Respondus” or “Vendor”) and The District Board of Trustees of Broward College, Florida (“Institution” or “Licensee” or “BC”) is entered into and effective as of the 1st day of August 2024 (the “Effective Date”).

WHEREAS, Respondus and Licensee previously entered into the Agreement;

WHEREAS, Respondus and Licensee wish to amend the Agreement as more specifically set forth below.

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. **Term.** The parties agree to renew the Agreement for the following consecutive annual terms.

Annual Term August 1, 2024 – July 31, 2025

Annual Term August 1, 2025 – July 31, 2026

Annual Term August 1, 2026 – July 31, 2027

2. **Fees.** Respondus and Licensee agree to the fees as contained in Attachment A.

3. **Updated Terms.** The following terms are incorporated herein as part of the Amendment:

- a. Attachment B - The Respondus 4.0 License Agreement, last updated: July 2, 2024.
- b. Attachment C - The LockDown Browser License Agreement for Educational Institutions, last updated: July 2, 2024.
- c. Attachment D - The Respondus Monitor Institution License and Terms of Use, last updated: February 27, 2024.
- d. Attachment E – the Addendum signed 08/21/2023.

4. **Agreement Terms.** Except for the Addendum signed 08/21/2023 and attached hereto as Attachment E, as of the Effective Date, Attachments B, C, and D to this Amendment, fully replace any previous versions contained in the Agreement. Terms not defined herein shall have the meanings set forth in the Agreement as amended hereby. In the event of a conflict between the terms of this Amendment, including Attachment B, Attachment C, and Attachment D, and the Agreement, the terms of this Amendment shall control. However, in the event of a conflict between the terms of this Amendment, and the Addendum, the Addendum shall control.

IN WITNESS WHEREOF, the parties have entered into this Amendment effective upon the day first written above. The persons executing this Amendment for and on behalf of the parties hereto represent that they are fully authorized to do so for and on behalf of their respective principals.



The District Board of Trustees of Broward College, Florida

Respondus

By: Signed by:
Donald Astrab
6DD41D98CFDAMF1...
Name: Donald Astrab
Title: Interim President

By: *Jodi Feeney*
Signed: 8/25/2024
Name: Jodi Feeney
Title: COO





**FEE AGREEMENT & PRICE QUOTATION
FOR LICENSE RENEWAL**

Date: 8/9/2024
Customer: Broward College
Student FTE: 25,000 – 30,000
Respondus Contact: Nick Laboda -- nlaboda@respondus.com

Annual Term: August 1, 2024 – July 31, 2025
LockDown Browser campus-wide license: \$6,445
Respondus 4.0 campus-wide license: \$2,745
Total due by July 31, 2024: \$9,190

Annual Term: August 1, 2025 – July 31, 2026
LockDown Browser campus-wide license: \$6,670*
Respondus 4.0 campus-wide license: \$2,745
Total due by July 31, 2025: \$9,415

Annual Term: August 1, 2026 – July 31, 2027
LockDown Browser campus-wide license: \$6,905*
Respondus 4.0 campus-wide license: \$2,745
Total due by July 31, 2026: \$9,650

* The campus-wide license for LockDown Browser has an annual price increase of 3.5% and includes 200 Respondus Monitor seats annually.

Additional Notes

- 1) This quote is confidential and valid for 90 days.
- 2) Respondus is the sole distributor in United States of Respondus, LockDown Browser, StudyMate Campus, and Respondus Monitor.
- 3) Our Federal Tax ID is **91-2050620**. All prices listed in US Dollars.
- 4) The above price quote does not include taxes, as may be required for your location. Respondus reserves the right to charge sales tax in accordance with applicable state and local laws if a valid exemption certificate is not provided. Prices are quoted on the basis that Respondus is paid in full without any offset, deductions, or withholding for or on account of any taxes, duties, or charges. If deductions are required, Respondus must be notified in advance and a revised quotation will be provided.



Respondus 4.0 License Agreement for Educational Institutions

Last Updated: May 12, 2023

This Respondus 4.0 (the “Software Product” or “Respondus 4.0”) License Agreement for Educational Institutions (“Agreement”) is an agreement between the institution, college, university or other learning institution (the, “Institution” or “Licensee”), and Respondus, Inc. (“Licensor”), regarding the Institution’s license, access, and use of Respondus 4.0. Institution agrees to the terms of this Agreement, and any changes to those terms upon Institution’s and/or its user’s continued use of Respondus 4.0, which indicates acceptance of this Agreement.

Definitions

Licensor: Respondus, Inc., a corporation duly organized and existing under the laws of the state of Washington, USA, having its corporate headquarters in Redmond, Washington, being proprietor of assessment tools for the education market.

Licensee: A institution, college, university, or other learning institution that has obtained a license for the Respondus software product in accordance with the terms of this agreement.

Affiliates: Current employees, instructors, and teaching assistants of the Licensee.

Software Product: Respondus: A Windows-based software application named *Respondus* that enhances the assessment capabilities of course management systems.

Duplication and Distribution Rights

The Licensee is permitted to redistribute the Software Product to Affiliates for the duration of this license.

Affiliates are permitted to use the Software Product only for educational or academic purposes. Use of the software for any other purpose (e.g., private consultant services) is prohibited. Affiliates have the right to use the Software Product at an off-campus location (e.g., at home) provided that all use is related to non-profit educational or academic endeavors for the Licensee.

The Licensee shall limit distribution of the Software Product to Affiliates. This includes, but is not limited to, preventing non-Affiliates access to the Software Product via internets, intranets, or the web.

Faculty or employees who discontinue their affiliation with the Licensee do not have the right to continue using personal copies of the Software Product obtained under the license, nor may former Affiliates obtain updates of the Software Product from the Licensee. However, the Licensee is not under obligation to enforce such compliance by former Affiliates beyond its implementation of restrictions set forth above regarding access to the Software Product by Affiliates.

The Licensee must display a full copyright notice on all copies of the Software Product being redistributed to Affiliates.

The Licensee must not eliminate, bypass, or in any way alter the copyright screen (also known as the “splash” screen) that appears when the Software Product is first started on a computer.



Attachment B

Any use or redistribution of the Software Product in a manner not explicitly stated in this agreement, or not agreed to in writing by the Licensor, is strictly prohibited.

Termination

This agreement is effective until terminated. The Licensee may terminate this agreement at any time by notifying the Licensor of the termination and destroying all copies of the Software Product. If the Licensee terminates its license prior to the end of the academic year (generally July 31), the Licensor will not refund or prorate the Licensee for its licensing fees, nor will it reduce or waive any licensing fees still owed to the Licensor. Upon termination of the license, the former Licensee must make a good faith effort to eliminate further use of the Software Product by Affiliates of the institution.

The Licensor has the right to terminate this agreement if the Licensee violates one or more terms in this agreement. If the Licensor sends a notice of termination to the Licensee, the Licensee must immediately discontinue all use of the Software Product. In addition, the Licensee may be subject to legal action by the Licensor.

Disclaimer of Warranty

While the Licensor has tried to ensure that the Software Product is accurate and free from defect, it is provided “as is” without warranty of any kind. The Licensee and its Affiliates assume the entire risk as to the results and performance of the Software Product **THE LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE LICENSOR BE LIABLE FOR ANY DAMAGES WHATSOEVER ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE PRODUCT.**

Limitation of Liability

UNDER NO CIRCUMSTANCES SHALL LICENSOR BE LIABLE TO LICENSEE ON ACCOUNT OF ITS USE OR MISUSE OF AND RELIANCE ON SOFTWARE PRODUCT. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES (EVEN IF RESPONDUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON SOFTWARE PRODUCT, FROM INABILITY TO USE, INTERRUPTION, SUSPENSION, OR TERMINATION OF THE SERVICES OR BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH THE SOFTWARE PRODUCT. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

Products and Services

Upon receipt of payment or purchase order, the Licensor will make available ticket-based support (<https://web.respondus.com/support/>) to an administrator and two support contacts designated by the Licensee. These individuals are known as “Authorized Support Persons.” Instructors may also use this support channel. It is up to the discretion of the Licensor to provide phone support in certain instances. The goal of the support staff is to provide a thoughtful response to each help ticket within 24 hours of submission, excluding weekends and U.S. holidays.

Term of Contract

This license agreement is based on “academic years,” starting August 1 or January 1, with the additional option to prorate the annual fee in the initial term. This agreement is automatically renewed, at



Attachment B

Licensors then current pricing and under Licensors then current terms and conditions, unless the Licensee indicates in writing its intent to discontinue its License. If the Licensee has not issued payment for its annual license fee by August 1 or January 1, whichever is applicable, the Licensor is permitted to withhold updates of the Software Product and to restrict access to services that are available to Licensees in good standing. The Software Product will cease to function after the license has expired.

Ownership of Software

The Software Product is copyrighted by the Licensor and remains the property of the Licensor. This license is not a sale of the original software or any copy. The Licensee owns the physical media on which the Software Product is installed, but the Licensor retains title and ownership of the software and all other materials included as part of the Software Product.

License Fees

There are two fees: a one-time *registration* fee and an *annual* fee. Both fees are payable by the Licensee during the first year. In subsequent years, only the annual fee is due.

The *one-time registration fee* for all institutions is \$200. This is a one-time payment that initiates an institution's license for the Software Product. If the Licensee terminates its license, or fails to renew it by the annual renewal date, payment of the full registration fee is required to reestablish the license.

For Higher Education, the *annual fee* is based on the student Full-Time Equivalency (FTE) at the institution. For K-12 institutions, the *annual fee* is based on the seat license for their learning management system. List fees for Software Product are set forth at <https://web.respondus.com/he/respondus/pricing/>.

Approximately three months prior to the August 1 license renewal date, the Licensor will provide the Licensee an invoice for the next year's license fee. Payment of the annual license fee is due by the renewal date.

Price Adjustment

The Licensor has the right to increase or decrease the annual license fee from year to year. If the Licensor intends to adjust the annual license fee, it must give notice to the Licensee no less than 60 days before the annual renewal date.

Prorating of Fees and Credits

The *registration* fee is not subject to prorating. During the first year of a license, the Licensor may, on its own discretion, prorate the annual license fee to adjust for a partial year of licensing.

General

The failure by a party to exercise or enforce any right hereunder shall not operate as a waiver of such party's right to exercise or enforce such right or any other right in the future. Modifications to this Agreement shall not be binding upon Respondus, absent its written consent. No purchase order or other document that purports to modify or supplement this Agreement shall add to or vary the terms of this Agreement. If a court should find that one or more rights or provisions set forth in this Agreement are invalid, the parties agree that the remainder of the rights or provisions shall be enforceable and that, to the extent permitted by law, the court shall give effect to the parties' intentions, as reflected in any such rights or provisions that have been declared invalid or unenforceable. If Institution does not agree to the terms and conditions of this Agreement, Institution is prohibited from accessing or using the Software Product. Any term that would naturally survive termination of this Agreement shall so survive, including, for example, the limitations of liability. Any notice required to be given under this Agreement



Attachment B

shall be deemed effective on the date sent if provided by electronic mail and acknowledged by the other party within 5 days of receipt, or if provided by registered or certified mail addressed to an administrator of the Institution or to Respondus, within three (3) days after deposit with the US Postal Service or international carrier.

Accessibility.

Licensors are committed to promoting and improving accessibility as specified under Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 et seq. and Section 504 and 508 of the Rehabilitation Act 29 U.S.C. 701 et seq. Licensors comply with federal accessibility laws and regulations to the extent described at <https://web.respondus.com/accessibility-respondus/>.

Privacy

Privacy Policy available at <https://www.respondus.com/privacy>

Initiating a License

To obtain a campus-wide license for Software Product, fill out the *Ordering and Contact Information* form below and return it with a purchase order or payment.



Attachment B

Respondus 4.0 Campus-wide License Ordering & Contact Information

To obtain a Campus-wide license for Respondus 4.0, return this entire agreement and the completed form below to Respondus. Please allow 2-3 days for processing.

Institution: Broward College **Campus/Branch:** All

LMS (select all being used):

- | | | |
|--|-----------|-------|
| <input type="checkbox"/> Blackboard Learn (9.x) Enterprise | Login URL | _____ |
| <input checked="" type="checkbox"/> Brightspace 10.x | Login URL | _____ |
| <input type="checkbox"/> Canvas | Login URL | _____ |
| <input type="checkbox"/> Moodle (2.x – 3.x) | Login URL | _____ |
| <input type="checkbox"/> Other | Login URL | _____ |

Higher Ed: Provide the student FTE based on IPEDS data: 25,570

K-12: Provide the number of seats licensed for your LMS: _____

Administrator Contact

This is the person who receives all information related to the Respondus software, including product updates, licensing, and billing information.

Name	<u>Alina Gonzalez</u>	Address	<u>6400 NW 6th Way</u>
Position	<u>Chief Business Officer</u>	City/State/Zip	<u>Ft. Lauderdale, FL, 33309</u>
Department	<u>Information Technology</u>	Telephone	<u>954-201-3509</u>
E-mail	<u>agonza13@broward.edu</u>		

Authorized Support Persons

These are the two individuals permitted to receive technical support from Respondus.

Name	<u>Jose Leon</u>	Address	<u>6400 NW 6th Way</u>
Position	<u>Sr. Specialist, LMS</u>	City/State/Zip	<u>Ft. Lauderdale, FL, 33309</u>
Department	<u>Information Technology</u>	Telephone	_____
E-mail	<u>jleon1@broward.edu</u>		

Name	_____	Address	_____
Position	_____	City/State/Zip	_____
Department	_____	Telephone	_____
E-mail	_____		

Return to: Respondus, Inc.
 P.O. Box 3247
 8201 164th Ave NE, Suite 200
 Redmond, WA 98052 | USA

Fax: 425-881-3329
 Email: sales@respondus.com



LockDown Browser License Agreement for Educational Institutions

Last Updated: February 3, 2023

This LockDown Browser[®] (the “Software Product” or “LockDown Browser”) License Agreement for Educational Institutions (“Agreement”) is an agreement between the institution, college, university or other learning institution (the, “Institution” or “Licensee”), and Respondus, Inc. (“Licensor”), regarding the Institution’s license, access, and use of LockDown Browser. Institution agrees to the terms of this Agreement, and any changes to those terms upon Institution’s and/or its user’s continued use of LockDown Browser, which indicates acceptance of this Agreement.

1) **Definitions.**

- a) *Software Product.* LockDown Browser, a customized browser that increases the security of online testing.
- b) *Optional/Additional Proctoring Software Service.* Respondus Monitor[®] is an optional, companion service for LockDown Browser that uses webcam technology to maintain the integrity of remote, online examinations. The Software Service includes an annual 200-seat license of Respondus Monitor (1 seat = 1 student per course, per term) with the ability to purchase additional seats. Respondus Monitor integrates with the following certain third-party products: Blackboard Learn, Brightspace, Canvas, Moodle, and Schoology. Licensee can enable or disable the Respondus Monitor service during the term of this Agreement, and use is subject to a separate Terms of Use located within the administrator area of respondus.com/login. Institution is subject to the restrictions as may be set forth in the applicable terms of use policy or end user license agreements as presented or available via hyperlink to any user of Software Product.
- c) *Trial Use.* Licensee may use Software Product and Respondus Monitor for a trial use limited to two (2) months without further obligation; provided, however, if Licensee uses the Software Product or Respondus Monitor for longer than the trial use, Licensee shall be bound for the minimum term duration offered by Licensor.
- d) *Affiliates.* Current employees, instructors, and students of the Licensee

2) **License Rights.** Licensee is permitted to redistribute the Software Product to its Affiliates, as defined above, for the duration of this license, or as otherwise permitted in writing by Licensor in its discretion. Affiliates and Licensee are permitted to use the Software Product only for educational or academic purposes. Use of the Software Product for any other purpose is prohibited. Licensee must display a full copyright notice on all copies of the Software Product being redistributed to Affiliates. The Licensee must not eliminate, bypass, or in any way alter the copyright screen (also known as the “splash” screen) that may appear when the Software Product is first started. Any use or redistribution of the Software Product in a manner not explicitly permitted in this Agreement is strictly prohibited.

3) **Termination.** This Agreement is effective until terminated as set forth herein. If no purchase is made by Licensee, then this Agreement shall terminate without further action by either party after the two (2) month pilot period has elapsed. Licensee may terminate this Agreement for convenience at any time by notifying the Licensor of the termination in writing. If Licensee terminates this Agreement prior to the end of the then current license term (e.g., July 31), no refund or proration is available or offered. No refunds are permitted under this Agreement. Upon termination of this Agreement, Licensee shall disable access to the Software Product within its environment. Licensor has the right to terminate this Agreement if the Licensee violates one or more terms in this Agreement, and upon written notice to Licensee, the Licensee fails to cure such breach within ten (10) days.



Attachment C

- 4) **Limited Warranty; Disclaimer of Warranties.** Licensor warrants that it has the legal right and title to grant the license rights under this Agreement to Licensee (“License Rights”). While the Licensor has tried to ensure that the Software Product is accurate and free from defect, it is provided “as is” without warranty of any other kind, except for a warranty breach for License Rights. Licensee and its affiliates assume the entire risk as to the results and performance of the Software Product. **EXCEPT FOR LICENSE RIGHTS, TO THE EXTENT NOT RESTRICTED BY APPLICABLE LAWS, LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.**
- 5) **Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL LICENSOR BE LIABLE TO INSTITUTION ON ACCOUNT OF ITS USE OR MISUSE OF AND RELIANCE ON LOCKDOWN BROWSER. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES (EVEN IF RESPONDUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON LOCKDOWN BROWSER, FROM INABILITY TO USE, INTERRUPTION, SUSPENSION, OR TERMINATION OF THE SERVICES OR BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH THE SOFTWARE PRODUCT. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- 6) **Indemnity.** Licensor agrees to indemnify Licensee against third party claims and related expenses alleging a breach of warranty by Licensor of the License Rights. Licensee agrees to provide prompt notice to Licensor of any claim where Licensee requests indemnification from Licensor under this Section, and Licensor shall have sole control of such defense.
- 7) **Products and Services.** Upon receipt of payment or purchase order, the Licensor will deliver or make available to the Licensee the Software Product and, as applicable, the Software Service. Updates of the Software Product and Software Service are made available to the Licensee at no additional charge, except in situations where custom software services are requested by the Licensee under a separate work order agreement.
- 8) **Support.** The Licensor will make available ticket-based support (<https://web.respondus.com/support/>) to an administrator and two support contacts designated by the Licensee. These individuals are known as “Authorized Support Persons.” Instructors and students may also use this support channel. It is up to the discretion of the Licensor to provide phone support in certain instances. The goal of the support staff is to provide a thoughtful response to each help ticket within 24 hours of submission, excluding weekends and U.S. holidays. The ‘Help Center’ within LockDown Browser enables students to open a ticket directly with Respondus Support. The Help Center also provides users the ability to email session log files from LockDown Browser to a location of their choosing, such as a university help desk, or Respondus Support.
- 9) **Term.** Upon agreement to purchase the Software Product, Institutions have the option of starting the annual license term on August 1 or January 1, with the additional option to prorate the annual fee in the initial term. If purchased, this Agreement is automatically renewed at Licensor’s then current pricing and under Licensor’s then current terms and conditions unless the Licensee indicates in writing its intent to discontinue its License. If the Licensee has not issued payment for its annual license by the renewal date, access to the Software Product may be suspended, and shall be terminated if payment is not received within 30 days.
- 10) **Ownership of Software.** The Software Product and Software Service are copyrighted by the Licensor and remain the property of the Licensor. This license is not a sale of the original software or any copy. Licensor retains title and ownership of the Software Product, all other materials included as part of the Software Product and Software Service, and all rights, title and interest therein, including all derivatives of the foregoing.
- 11) **License Fees.** Software Product is licensed as a campus-wide site license. The annual fees are based on the student Full-Time Equivalency (FTE) at the Institution, as reported by IPEDS. For Institutions outside the United States, the annual fee is based on total student annual enrollment, subject to audit by Licensor. List fees



Attachment C

for Software Product are set forth at <https://web.respondus.com/he/lockdownbrowser/pricing/>. Annual pricing for additional seats of Respondus Monitor, the Software Service, is available under a separate fee agreement. Pricing can be found at <https://web.respondus.com/he/monitor/pricing/>. Licensor shall provide Licensee an invoice prior to the start of any renewal term. Payment of such invoice is due prior to the start of the renewal term.

- 12) **Price Adjustment.** Licensor has the right to increase or decrease the annual license fee from year to year. If Licensor intends to adjust the annual license fee, it shall provide notice to the Licensee no less than 60 days before the annual renewal date.

13) **General**

- a) **Waiver.** The failure by a party to exercise or enforce any right hereunder shall not operate as a waiver of such party's right to exercise or enforce such right or any other right in the future.
- b) **Privacy.** Respondus cares about your privacy and the security of your personal data. The Respondus Privacy Policy is available at <https://www.respondus.com/privacy/>, and incorporated herein by reference.
- c) **Accessibility.** Licensor is committed to promoting and improving accessibility as specified under Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 et seq. and Section 504 and 508 of the Rehabilitation Act 29 U.S.C. 701 et seq. Licensor complies with federal accessibility laws and regulations to the extent described at <https://web.respondus.com/accessibility-lockdown/>.
- d) **Insurance.** Licensor maintains general commercial liability insurance, cyber liability insurance, professional liability (errors and omissions) insurance, and where applicable worker's compensation insurance.
- e) **Entire Agreement.** This Agreement supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Agreement. This Agreement, which incorporates the Respondus Monitor Institutional Terms of Use and the Respondus Monitor Privacy Policy by reference, constitutes the complete and entire agreement and sole understanding of the parties with respect to the subject matter of the Agreement, and may not be amended or modified except in writing signed by both of the Parties. Any conflicting terms presented by Licensee in a purchase order or other agreement shall be deemed null and void. If a court should find that one or more rights or provisions set forth in this Agreement are invalid, the parties agree that the remainder of the rights or provisions shall be enforceable and that, to the extent permitted by law, the court shall give effect to the parties' intentions, as reflected in any such rights or provisions that have been declared invalid or unenforceable. If Institution does not agree to the terms and conditions of this Agreement, Institution is prohibited from accessing or using the Software Product. Any term that would naturally survive termination of this Agreement shall so survive, including, for example, the limitations of liability. Any notice required to be given under this Agreement shall be deemed effective on the date sent if provided by electronic mail and acknowledged by the other party within 5 days of receipt, or if provided by registered or certified mail addressed to an administrator of the Institution or to Respondus, within three (3) days after deposit with the US Postal Service or international carrier.



Attachment C

LockDown Browser / Respondus Monitor Ordering & Contact Information

To obtain a Campus-wide license for LockDown Browser / Respondus Monitor, return this entire agreement and the completed form below to Respondus. Please allow 2-3 days for processing.

Institution: Broward College **Campus/Branch:** All

LockDown Browser only LockDown Browser and Respondus Monitor

Higher Education: Provide the student FTE based on IPEDS data: _____ **25,570**
(For institutions outside of the US, provide the total student annual enrollment)

LMS (select all being used):

- | | | |
|---|-----------|-------|
| <input type="checkbox"/> Blackboard Learn | Login URL | _____ |
| <input checked="" type="checkbox"/> Brightspace | Login URL | _____ |
| <input type="checkbox"/> Canvas | Login URL | _____ |
| <input type="checkbox"/> Moodle | Login URL | _____ |
| <input type="checkbox"/> Sakai* | Login URL | _____ |
| <input type="checkbox"/> Schoology | Login URL | _____ |

*Respondus Monitor is not available for Sakai

Administrator Contact

This is the person who receives all information related to the Respondus software, including product updates, licensing, and billing information.

Name	<u>Alina Gonzalez</u>	Address	<u>6400 NW 6th Way</u>
Position	<u>Chief Business Officer</u>	City/State/Zip	<u>Ft. Lauderdale, FL, 33309</u>
Department	<u>Information Technology</u>	Telephone	<u>954-201-3509</u>
E-mail	<u>agonza13@broward.edu</u>		

Authorized Support Persons

These are the two individuals permitted to receive technical support from Respondus.

Name	<u>Jose Leon</u>	Address	<u>6400 NW 6th Way</u>
Position	<u>Sr. Specialist, LMS</u>	City/State/Zip	<u>Ft. Lauderdale, FL, 33309</u>
Department	<u>Information Technology</u>	Telephone	<u>954-201-4543</u>
E-mail	<u>jleon1@broward.edu</u>		

Name	_____	Address	_____
Position	_____	City/State/Zip	_____
Department	_____	Telephone	_____
E-mail	_____		

Return to: Respondus, Inc. Fax: 425-881-3329
 P.O. Box 3247 Email: sales@respondus.com
 8201 164th Ave NE, Suite 200
 Redmond, WA 98052 | USA



Attachment D

**RESPONDUS MONITOR
INSTITUTION LICENSE AND TERMS OF USE**

These Terms of Use ("Terms") are an agreement between the institution to which license and access to Respondus Monitor is granted ("Institution"), and Respondus, Inc., ("Respondus"), regarding the Institution's use of Respondus Monitor®. Institution agrees to these Terms in full before using Respondus Monitor.

SERVICE AND SOFTWARE COMPONENTS. Respondus Monitor is a cloud-based service ("Respondus Monitor Services") and software ("the Software") (also collectively referred to herein as "Respondus Monitor"), that work together to provide a video/audio recording service and associated data analysis of student activity captured during student assessment sessions for use in monitoring students.

LICENSE GRANT AND USE. By accepting these Terms, Institution is granted a non-exclusive, non-transferable, non-assignable license to use the Software and to access and use the Respondus Monitor Services for the duration of the license term, in accordance with these Terms, subject to license fees requirements as explained below, and as may be further specified in a separate license fee agreement. Institution may not modify, distribute, sell, or sublicense any part of Respondus Monitor. Institution may not reverse engineer or attempt to extract the source code of Respondus Monitor. Respondus Monitor is licensed to Institution, not sold or transferred to Institution. Institution agrees that it may not use Respondus Monitor in any way that conflicts with or violates any federal, state, or local law, these Terms or other agreements between Institution and any third-party, including that of the learning management system ("LMS") through which Institution accesses Respondus Monitor Services. Institution warrants and represents it is free to enter into these Terms and that it will not violate any law, regulation or contractual obligation by entering into these Terms, including laws regarding the use of products and acceptance of terms by minors, and that it will obtain all necessary consents and permissions, including parental consents if applicable, for the use of the Respondus Monitor Services. These Terms shall remain valid and in effect for the duration of the license term and thereafter until all data relevant to the Institution has been disposed of as described in this Agreement.

FEES. The license grant for Respondus Monitor is separate from that of Respondus Lockdown Browser. If Institution is being granted access to a "beta" version of Respondus Monitor under these Terms, or is participating in a pilot program for Respondus Monitor under these Terms, no license fees will be charged by Respondus for Institution's use of Respondus Monitor as part of the pilot program, or for Institution's use of the beta version made available by Respondus. However, Respondus reserves the right to terminate any non-paid license grant to the Software or non-paid grant of access to Respondus Monitor Services (including for a beta version or pilot program), at any time, subject to any other written agreement(s) between the parties. License fees for Respondus Monitor are provided in a separate license fee agreement, if and when applicable, and are incorporated herein by reference.

SUPPORT AND MAINTENANCE. Support and maintenance terms for Respondus Monitor are detailed in the separate license fee agreement, if and when applicable, and are incorporated herein by reference.

PRIVACY & SECURITY POLICY. Respondus cares about your privacy and the security of your personal data. The Respondus Privacy Policy, located at <https://www.respondus.com/privacy/>, as well as the Respondus Data Processing Agreement, found at <https://web.respondus.com/data-processing-overview/>, are incorporated by reference into these Terms and we recommend that you review them carefully. The information below summarizes important aspects of the security used with Respondus Monitor and how we process your personal data. Together with the Institution, the controller of the data, we work to protect the online privacy of those who use Respondus Monitor. You acknowledge that you have reviewed and agree to the Privacy Policy, The Data Processing Agreement, and the Additional Privacy Information on Respondus Monitor.

Respondus Monitor uses the following methods to limit access to video sessions and associated data.

1. Respondus Monitor uses industry standard encryption to transfer information.
2. Student identifiable information including name, grade, course name, and photos that show identification cards can only be accessed through the learning management system's (LMS's) extension architecture (e.g., Blackboard Building Block).
3. Only users with instructor credentials for the LMS course (e.g., instructors, teaching assistants, LMS administrators) are able to view video sessions in conjunction with the student identifiable information.



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4. Video URLs are "one-time use" and will not function if copied.
5. Respondus uses independent, third-party security firms to perform "penetration testing" of the Respondus Monitor system. This includes a review of the Respondus Monitor architecture and the testing for vulnerabilities and exploits.

Unfortunately, no data transmission over the Internet is 100% secure, and Respondus does not warrant the security of any information collected using its services. By agreeing to these Terms, Institution agrees to use Respondus Monitor at its own risk, and agrees that Respondus shall not be liable if a security breach occurs, if the site malfunctions, or if information is misused or mismanaged in any way to Institution's detriment or to the detriment of a student, staff member or third party, whether by Respondus, Institution, or an unauthorized third party.

Each student that is recorded will have a unique username or identification code ("ID") and password through the Institution's LMS. The ID and password will be usable by students, at the discretion of Institution, to allow students to transmit recordings to the online component of Respondus Monitor if required by Institution as part of an assessment activity. Instructors, administrators, and other agents of Institution may access those recordings related to the Institution's students through Respondus Monitor.

Random samples of video and/or audio recordings may be collected via Respondus Monitor and used by Respondus to improve the Respondus Monitor capabilities for institutions and students. The recordings may be shared with researchers under contract with Respondus to assist in such research, and the researchers are under written obligation to maintain the video and/or audio recordings in confidence and under terms at least as strict as the terms herein. No personally identifiable information for students is provided with the video and/or audio recordings to researchers in the nature of student names, course names, institution, grades, or student identification photos submitted as part of the Respondus Monitor exam session.

Other than the research purposes identified above, Respondus will not share recordings or personally identifying information of any particular student (collectively also referred to herein as "personal information or data") with third parties (third parties do not include the student who provided the personal information, the parent/guardian of a student under the age of 18 who provided personal information, or the institution who authorized access by the student to Respondus Monitor Services), unless specifically required by Institution. For example, if Institution uses third parties to manage student personal information, Institution may direct Respondus to share the personal information or data with that third party under Institution's direction and control.

If, in the future, Respondus, or substantially all of its assets are acquired, the maintenance of all collected personal information or data (including any recordings) may be transferred to the acquiring party, provided that the acquiring party implement a privacy and security policy compliant with current legal standards, and provided that the collected personal information and data remain under the control of Institution.

Respondus Monitor analyzes the recordings of student activity as part of an automated proprietary process. Respondus personnel do not review/analyze the recordings except as may be required to resolve technical problems, improve system performance, modify Respondus Monitor services, investigate violations of these Terms, or as may be directed by Institution.

Respondus reserves the right at all times to disclose any information or data (including recordings and any content to the extent applicable) stored by Institution, students or any other user as necessary, to comply with the law, a regulation or a governmental request, or to edit or remove any information or data, in whole or in part, that in Respondus' sole discretion, is in violation of these Terms (however, if Respondus elects to, for any reason, refuse, delete or move any recording of student activity for violation of these Terms, Respondus will save a copy of such recording for access by the Institution, subject to conditions of these Terms that define the duration of storage of such recordings otherwise).

If you have any questions regarding our privacy and security policy, please contact Respondus by email at or by writing to:

Respondus, Inc.
Attn: Legal
8201 164th Ave NE, Suite 200
Redmond, WA 98052
USA
Via email: privacy@Respondus.com



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USER CONDUCT. Institution shall be responsible for the conduct of all of its agents, including, such as, for example, instructors that use Respondus Monitor, to ensure that Institution's agents comply with these Terms on behalf of Institution. Institution promises NOT to use Respondus Monitor Services or Software for any of the following purposes or activities:

- a. conducting or supporting illegal activity of any type whatsoever;
- b. transmitting or storing worms or viruses or any code of a destructive nature;
- c. threatening, harassing, abusing, impersonating, injuring, or intimidating others;
- d. engaging in vulgar, invasive, or hateful conduct, or conduct that invades another's privacy;
- e. interfering with others' use of Respondus Monitor Services or Software, unless such interference is for the purpose of complying with another section of these Terms;
- f. delivering spam or collecting information to deliver spam, or sending unsolicited advertisements;
- g. decompiling, disassembling, reverse engineering or otherwise attempting to discover any source code contained in the Software or the Respondus Monitor Services;
- h. disguising the origin of any content transmitted through the Respondus Monitor Services or Software or manipulating a user's presence on Respondus Monitor Services or Software; and/or
- i. causing the launch of any automated system(s) that access the Respondus Monitor Services or Software in a manner that sends more request messages to servers of Respondus in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser.

ACTIVITY GENERAL. Institution is responsible for the conduct of all of its agents, including instructors, and their activities arising during use of Respondus Monitor and for any information or data they provide to or through Respondus Monitor. Institution agrees that Respondus is not responsible for, nor liable for, any mistakes, inaccuracies, lack of usefulness, defamation, omissions, falsehood, obscenity or otherwise offensive material in any of the information or data provided to users. Institution also understands that Respondus does not, and has no obligation to, monitor, pre-screen nor pre-approve information or data, but that Respondus shall nonetheless have the right (but not the obligation) in its sole discretion, to refuse, delete or move any information or data that is available via Respondus Monitor, if such information or data violates any of these Terms, subject to the obligation to save any student activity recordings as described above under the PRIVACY & SECURITY POLICY section and as further described below under LICENSE PROVIDED TO RESPONDUS.

LICENSE PROVIDED TO RESPONDUS. By default, Respondus Monitor will save all media files (such as: recordings of students, thumbnail images, and photos of ID cards) and Personally Identifiable Information ("PII") in the database (such as: username, ID number, and first/last name) for a period of five (5) years. Institutions have the ability to select a shorter data retention period if desired. Media file retention may be set from thirty (30) days to five (5) years. PII retention may be set from eighteen (18) months to five (5) years. **Respondus does not claim ownership in the information or data Institution or any students provide;** however, by providing information or data to Respondus, Institution grants Respondus, and its affiliates, a fully paid-up, perpetual license to use, store, modify, copy, and transmit any such information or data for the purpose of carrying out the Respondus Monitor Services in accordance with these Terms.

CHANGES AND TERMINATION. Respondus reserves the right to change these Terms, at its discretion, provided that it provides written notice to Institution of material changes made to the Terms within fifteen (15) days after a change has been made. Respondus will provide written notice by placing a notification of the change on the Respondus webpage which includes the Terms and emailing Institution's listed Administrative Contacts and informing them of material changes to the Terms. Institution shall have the right to object to such change, but only on reasonable grounds, and only in writing provided to Respondus, within thirty (30) days after Respondus provides notice of the change. If Institution does object to the change in accordance with the procedures described above, such change shall not take affect during the current licensing term unless such change was required by law.

INDEMNIFICATION DUE TO INFRINGEMENT. Subject to prompt notification by Institution, cooperation by Institution, and control of all litigation and/or settlement by Respondus, Respondus shall indemnify, defend and hold harmless Institution from and



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against any and all costs and damages assessed against Institution by a judgment that Respondus Monitor infringes upon any third party intellectual property right. Each party agrees to notify the other promptly of any matters in respect to which this indemnification may apply. If notified in writing of any action or claim for which Respondus is to provide indemnity, Respondus shall defend those actions or claims at its own expense and pay the costs and damages awarded against Institution in any such action, or pay any settlement of such action.

WARRANTY REGARDING 3rd PARTY INTELLECTUAL PROPERTY. Respondus warrants and represents that, to the best of its knowledge, at the time these Terms are first accepted by Institution, Respondus Monitor does not infringe any patent, trademark or copyright or misappropriate any trade secret of any third party. If Respondus should later discover that a potential infringement exists, and if Respondus is unable to immediately modify Respondus Monitor to avoid such potential infringement, Respondus shall promptly notify Institution and Institution shall have the independent right to immediately terminate use of Respondus Monitor and to obtain a refund of any advanced paid license fees, unless Respondus Monitor is able to provide a non-infringing alternative within ninety (90) days. Also, in the case such potential infringement is discovered, Respondus shall have the right to immediately terminate Respondus Monitor at its own discretion, in which case, Respondus shall refund all advanced paid license fees.

DISCLAIMERS. The disclaimers in this section are subject to Respondus' promise of Indemnification Due to Infringement, and Respondus' Warranty Regarding 3rd Party Intellectual Property, under the respective sections of those terms above, and no term in this section shall limit Respondus' promises under those terms. Respondus disclaims responsibility or liability for the accuracy, content, completeness, legality, reliability, operability or availability of information or data in the Respondus Monitor Service or Software. Respondus further disclaims any responsibility for the deletion, failure to store, misdelivery, or untimely delivery of any information or data. Respondus disclaims any responsibility for any harm resulting from downloading or accessing any information or data through Respondus Monitor. Institution will bear all risk associated with any information or data Institution accesses. Institution's access or use of any information or data provided by Respondus Monitor or third parties is conditioned on Institution's agreement to these Terms, including these disclaimer provisions.

SUBJECT TO RESPONDUS' WARRANTY REGARDING 3rd PARTY INTELLECTUAL PROPERTY AS SET FORTH ABOVE, RESPONDUS MONITOR IS PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER. ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED. TO THE FULLEST EXTENT PERMITTED BY LAW, RESPONDUS DISCLAIMS ANY WARRANTIES FOR THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF RESPONDUS MONITOR. RESPONDUS SIMILARLY DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY WARRANTIES FOR ANY INFORMATION OR ADVICE OBTAINED THROUGH RESPONDUS MONITOR.

SUBJECT TO RESPONDUS' WARRANTY REGARDING 3rd PARTY INTELLECTUAL PROPERTY AS SET FORTH ABOVE, INSTITUTION UNDERSTANDS AND AGREES THAT ANY INFORMATION OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF RESPONDUS MONITOR IS OBTAINED AT ITS OWN DISCRETION AND RISK AND THAT INSTITUTION WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO ITS COMPUTER SYSTEM(S) OR LOSS OF DATA THAT MAY RESULT IN THE DOWNLOAD OF SUCH INFORMATION OR DATA. SUBJECT TO RESPONDUS' WARRANTY REGARDING 3rd PARTY INTELLECTUAL PROPERTY AS SET FORTH ABOVE, UNDER NO CIRCUMSTANCES SHALL RESPONDUS BE LIABLE TO INSTITUTION ON ACCOUNT OF ITS USE OR MISUSE OF AND RELIANCE ON RESPONDUS MONITOR. SUCH LIMITATION OF LIABILITY SHALL APPLY TO PREVENT RECOVERY OF DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, AND PUNITIVE DAMAGES (EVEN IF RESPONDUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). SUCH LIMITATION OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON RESPONDUS MONITOR, FROM INABILITY TO USE RESPONDUS MONITOR, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE RESPONDUS MONITOR SERVICES OR BY REASON OF ANY INFORMATION OR ADVICE RECEIVED THROUGH THE RESPONDUS MONITOR SERVICES. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

INTELLECTUAL PROPERTY. All web design, text, graphics, the selection and arrangement thereof, and all software compilations, underlying source code, software and all other material on Respondus Monitor are either the copyright or trademark of Respondus, or covered by other intellectual property rights of Respondus or a third party licensor of Respondus. Any use of Respondus Monitor beyond the purpose indicated above is strictly prohibited. Institution shall not acquire any rights in Respondus' Intellectual property by using Respondus Monitor.

MISCELLANEOUS. Respondus may terminate Institution's use of Respondus Monitor if Institution breaches or violates these Terms, provided that Respondus allow Institution a period of fifteen (15) days to cure any such breach or violation. Unless
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otherwise specified in writing, these Terms constitute the entire agreement between the parties with respect to the subject matter contained herein and supersede any other prior agreements between Respondus and Institution regarding Respondus Monitor. If Respondus should fail to enforce any right or provision in these Terms, this failure shall not constitute a waiver of such right or provision or of any other rights or provisions in these Terms. If a court should find that one or more rights or provisions set forth in these Terms are invalid, the parties agree that the remainder of the rights or provisions shall be enforceable and that, to the extent permitted by law, the court shall give effect to the parties' intentions, as reflected in any such rights or provisions that have been declared invalid or unenforceable. If Institution does not agree to these Terms, Institution will not be permitted to use Respondus Monitor. Any term that would naturally survive termination of these Terms shall survive, including, for example, INDEMNIFICATION DUE TO INFRINGEMENT as to Institution's prior use of Respondus Monitor before termination. Any notice required to be given under these Terms shall be deemed effective on the date sent if provided by email, or if provided by registered or certified mail addressed to an administrator of the Institution or to Respondus, within three (3) days after deposit with the US Postal Service, or upon delivery when sent by overnight carrier or international carrier.

CONFLICTS. These Terms are subject to the Broward College Supplemental Addendum – Software signed 08/21/2023 (the “Addendum”) between Licensor and Licensee. In the event of a conflict between these Terms and the Addendum, the terms of the Addendum shall control.





**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 and upon satisfaction of the BC conditions that are detailed herein. In lieu of all provisions in the Agreement pertaining to penalties 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 Disabilities Act to the extent provided at <https://web.respondus.com/accessibility-lockdown/>.

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 Chief of Staff and Vice President of Communications and Community Relations, Isabel Gonzalez, 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.



**BROWARD COLLEGE
SUPPLEMENTAL ADDENDUM - SOFTWARE**

11. BC Rights in Information. BC retains all rights to, title to, and interest in BC Data, and Vendor's use and possession thereof is solely on BC's behalf. BC may access and copy any BC Data in Vendor's possession at any time through the integration with BC's learning management system, and Vendor shall facilitate 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-provided 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"). If 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 to the extent legally permissible (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.

In accordance with BC's elected retention period (which, at the time of execution, is two (2) years) or upon request by BC, Vendor shall promptly destroy all BC Confidential Information. This section shall not be subject to any limitations of liability provisions in





**BROWARD COLLEGE
SUPPLEMENTAL ADDENDUM - SOFTWARE**

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.

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. Notwithstanding the foregoing, nor to limit BC’s responsibility to respond to a request under Chapter 119, for clarity, Vendor has advised BC that any Vendor documents or records concerning data privacy, security practices, and any audit results thereof and that are marked trade secrets by Vendor are considered by Vendor to be trade secrets, as defined in Chapter 668.02 and exempt from disclosure under Chapter 119.0715. 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) 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: Respondus, Inc.

By: Jodi Feeney
Signed: 8/21/2023

Name: Jodi Feeney

Title: COO

Date: 08/21/2023





**BROWARD COLLEGE
SUPPLEMENTAL ADDENDUM - SOFTWARE**

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Record of Signing

For
Name
Title

Jodi Feeney

Signed on 2023-08-21 13:14:30 GMT

Secured by Concord™
DocumentID: Y2Q1Y2RkM2MtMW
SigningID: MWRhNGE3YzgtYm
Signing date: 8/21/2023
IP Address: 73.186.196.212
Email: jfeeney@respondus.com



Record of Signing

For
Name
Title

Jodi Feeney

Signed on 2024-08-25 22:39:12 GMT

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SigningID: 02xVQTU160BvOsDMkWAnOa
Signing date: 8/25/2024
IP Address: 71.192.164.81
Email: jfeeney@respondus.com

