

University Addendum

The following terms and conditions are hereby included and incorporated into the agreement between the Board of Trustees of the University of Arkansas, acting for and on behalf of the University of Arkansas, Fayetteville (the "University of Arkansas" or "University") and the undersigned vendor (the "Vendor"), dated the _____ day of _____, _____ (the "Agreement"):

- 1. Governing Law and Jurisdiction.** The Agreement and all claims arising out of or relating to the Agreement shall be governed by the laws of the State of Arkansas (without regard to its conflict of law provisions) and all matters relating to the validity, interpretation and enforcement of the Agreement shall be determined in the State of Arkansas. The parties further agree that the Arkansas State Claims Commission has exclusive jurisdiction over any claims for damages against the University. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 2. Arbitration.** Any agreement to submit to binding arbitration is deleted.
- 3. Indemnification.** Pursuant to Article 12, § 12 of the Arkansas Constitution, the University may not enter into a covenant or agreement to hold a party harmless or to indemnify a party from prospective damages. Any provisions requiring the University to indemnify Vendor are deleted in their entirety. With respect to loss, expense, damage, liability, claims or demands, either at law or in equity, for actual or alleged personal injuries or property damage arising from the negligence or misconduct of University, University agrees with Vendor that: (a) It will cooperate with Vendor in the defense of any action or claim brought against Vendor seeking the foregoing damage or relief; (b) It will in good faith cooperate with Vendor should Vendor present any claims of the foregoing nature against University to the Claims Commission of the State of Arkansas; (c) It will not take any action to frustrate or delay the prompt hearing on claims of the foregoing nature by the said Claims Commission and will make reasonable efforts to expedite said hearing; provided, however, University reserves its right to assert in good faith all claims and defenses available to it in any proceeding in said Claims Commission or other appropriate forum.
- 4. Liability.** Any provisions stating that the University agrees to be responsible for the acts or omissions of anyone other than its employees in their official capacity are deleted in their entirety.
- 5. Limitations of Liability.** [Any provision limiting Vendor's liability to the purchase price paid for the product or service will henceforth be amended to raise Vendor' liability to a maximum of two times the amount the University paid for the product or service.] In no event shall the liability of Vendor be limited for intentional torts, criminal acts, fraudulent conduct, gross negligence, or Vendor's obligation to indemnify University against any claims by third parties regarding unauthorized use of intellectual property.
- 6. Immunities.** Nothing in this Agreement shall be deemed or construed as a waiver of the sovereign immunity of the State of Arkansas, or any other immunities available to University or its officers, agents and employees.
- 7. Warranty & Indemnification.** Vendor warrants and represents that any software will operate as described in documentation furnished by Vendor and consistent with industry standards. Vendor further guarantees that if the items furnished hereunder are to be installed

by the Vendor, that such items will function properly when installed. Vendor warrants and represents that all services will be provided in a professional and workmanlike manner consistent with or exceeding industry standards. Vendor warrants and represents that it owns or controls all intellectual property rights necessary to the performance of this Agreement. Vendor agrees to defend, indemnify and hold University harmless for all claims arising from any actual or alleged unauthorized use of a trademark, patent, copyright, process, idea, method, device or software covered by this Agreement. Vendor shall defend, indemnify, and hold harmless University, its agents, officers, board members, and employees from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to the performance of Vendor's obligations under this contract, including but not limited to any claims pertaining to or arising from Vendor's negligence, intentional acts or omissions.

8. **Interest.** Pursuant to Ark. Code Ann. § 19-11-224, no interest or late fees shall accrue until amounts are 60 days past due. The interest rate shall be 6% per annum, consistent with Ark. Code Ann. § 4-57-101(d).

9. **Attorneys' Fees.** Any provisions requiring the University to pay Vendor's attorneys' fees are deleted in their entirety. Any legal controversy or legal claim arising out of or relating to this Agreement which results in litigation shall result in each party being solely responsible for its respective attorneys' fees and costs throughout the entire process of any and all proceedings.

10. **Insurance.** Any provisions stating that the University shall purchase liability insurance are hereby deleted in their entirety. As an entity of the State of Arkansas and therefore entitled to sovereign immunity, the University does not maintain commercial or general liability insurance.

11. **Confidentiality.**

a. **Safeguarding of Customer Information.**

(i) Throughout the term of this Agreement, Vendor shall implement and maintain "appropriate safeguards," as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all "customer information," as that term is defined in 16 C.F.R. § 314.2(b), received by Vendor pursuant to this Agreement.

(ii) Vendor shall promptly notify the University, in writing, of each instance of (i) unauthorized access to or use of any customer information that could result in substantial harm or inconvenience to a customer of the University or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of any customer information. Within 30 days of the termination or expiration of this Agreement, Vendor shall destroy all records, electronic or otherwise, in its or its agents' possession that contain such customer information and shall deliver a written certification of the destruction to the University.

(iii) Vendor consents, upon reasonable advance notice, to University's right to conduct an on-site audit of Vendor's security program.

(iv) Notwithstanding any other provisions of this Agreement, University may terminate this Agreement for cause if Vendor has allowed a material breach of its security program, if Vendor has lost or materially altered customer information, or if the University reasonably determines that Vendor's security program is inadequate.

(v) Vendor shall defend, indemnify, and hold harmless University, its agents, officers, board members, and employees from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to any allegations of security breaches, violations of the Safeguard Rule caused by vendor's negligence, intentional acts or omissions, or any loss or material alteration of customer information.

(vi) Vendor shall reimburse the University for any damages, including but not limited to any costs required to reconstruct lost or altered information, resulting from any security breach, loss, or alteration of customer information.

- b. **FOIA.** To the extent that University has an obligation not to disclose information under the Agreement, such obligation is subject to any obligations of University pursuant to the Arkansas Freedom of Information Act.
- c. **HIPAA.** To the extent that this contract involves covered use or receipt of Protected Health Information, as defined under the Health Insurance Portability and Accountability Act (HIPAA), vendor agrees to fully comply with all applicable privacy requirements under HIPAA.
- d. **FERPA.** To the extent that Vendor will have access to, store or receive student education records, the Vendor agrees to abide by the limitations on use and re-disclosure of such records set forth in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and 34 CFR Part 99. The Vendor agrees to hold student record information in strict confidence and shall not use or disclose such information except as authorized in writing by the University or as required by law. Vendor agrees not to use the information for any purpose other than the purpose for which the disclosure was made. Upon termination, Vendor shall return all student education record information within thirty (30) days without keeping a copy for itself.
- e. **Processing of Personal Data – European Union General Data Protection Regulations.** With respect to any processing of personal data of persons located in, or such data obtained from within, the European Union (EU), each party certifies that it will comply with all applicable laws or regulations related to acceptance, transmission, and/or storage of personal data in accordance with the EU's General Data Protection Regulations ("GDPR"). The parties have or will specify the subject matter and duration of the processing; the nature and purpose of the processing; and the type of personal data and categories of data subject. Vendor (Processor) will only act on the written instruction of the University (Controller) and will assist the University in compliance with GDPR in relation to the security of processing, the notification of personal data breaches, data protection impact assessments, answering data subjects' requests, and allowing data subjects to exercise their rights. Vendor will ensure that individuals processing the data are subject to a duty of confidentiality and only engage sub-processors with the prior consent of the University and under a written contract. Vendor consents to audits and inspections as necessary to ensure compliance with these provisions. Vendor shall return, or, at the University's discretion, delete all personal data obtained from the University (and any copies thereof) at the end of the contract and submit whatever information the University needs to ensure that both parties are meeting their GDPR Article 28 obligations.

12. **Legislative Appropriation.** The parties recognize that performance of this Agreement by University may be dependent upon the appropriation of funds by the Arkansas General Assembly (the "Legislature"). If the Legislature fails to appropriate the necessary funds, then by written notice to Vendor, University may cancel this Agreement without further duty or obligation. The parties recognize and understand that appropriation is a legislative act and is beyond the control of University.

13. **Prepayment.** Any provision of the Agreement requiring a deposit or prepayment is deleted. Any such prepayment amount stated in the Agreement shall instead be due upon delivery of a fully and correctly functioning product after University has tested such product.

14. **Marks and Logos.** Vendor acknowledges that University's marks and logos are the exclusive property of the University. The parties agree that this Agreement does not transfer, license, or allow any use of the University's logos or other marks except to the limited extent expressly set forth in this Agreement. Unauthorized use of the logos or any other marks of University by Vendor or its respective employees, affiliates, or subagents constitutes infringement of University's rights and a material breach of this Agreement. Under no circumstances may Vendor use University's name, logos, or any other marks in such a manner as to imply or state an endorsement of Vendor by University. Upon expiration or termination of this Agreement for any reason, Vendor must immediately discontinue use of the name, logos, or any other marks of the University.

15. **Reverse Engineering.** In the event that (i) Vendor ceases business operations for more than thirty (30) days for any reason, including bankruptcy or (ii) Vendor fails to provide proper service and support, and the failure is not remedied within thirty (30) days of a written request by University, University is allowed to decompile, reverse assemble or reverse compile any software associated with the Agreement or any part of the software to correct the problem.

16. **Export Control.** Any Export Control provision of the Agreement is hereby amended to require Vendor to specifically identify and provide the classification for any technology that may be governed by U.S. export control laws or regulations.

17. **Policies and Laws.** Vendor agrees that its officers, directors, agents, employees, subcontractors, licensees, partner organizations, guests and invitees shall obey all University policies while on campus. Further, Vendor shall obey all federal, state and local laws, ordinances, and regulations.

18. **Third-Party Beneficiaries.** There are no third-party beneficiaries of this Agreement unless expressly agreed by the parties in writing. No person or entity, other than the University and Vendor and their successors and permitted assigns shall have any rights, remedies, claims, benefits, or powers under this Agreement.

19. **Independent Contractors.** Vendor acknowledges that under this Agreement it is an independent contractor and is not operating in any fashion as the agent of the University. The relationship of the parties to this Agreement is that of independent contractors, and nothing in this Agreement should be construed to create any agency, joint venture, or partnership relationship between the parties.

20. **Assignments.** This Agreement is not assignable nor the duties hereunder delegable by either party without the written consent of the University.

21. **Standard Terms and Conditions.** Vendor agrees to the following:

a. **Non-Discrimination.** Vendor agrees to adhere to any and all applicable Federal and State laws, including laws pertaining to non-discrimination. In particular, consistent with the provisions of Act 954 of 1977, as amended and codified at Ark. Code Ann. § 25-17-101, the vendor agrees as follows: (a) the vendor will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap or national origin; (b) in all solicitations or advertisements for employees, the vendor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap or national origin; (c) failure of the vendor to comply with the statute, the rules and regulations promulgated thereunder and this non-discrimination clause shall be deemed a breach of contract and this contract may be canceled, terminated or suspended in whole or in part; (d) the vendor will include the provisions of items (a) through (c) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.

b. **Conflict of Interest.** Vendor recognizes that University of Arkansas Board of Trustees Policy 330.1 provides that the University shall not, without approval of the Chancellor or Vice President for Agriculture, enter into a contract with a current or former state employee, member of the Arkansas General Assembly, state constitutional officer or board or commission member, or the immediate family member thereof, or any entity in which such a person holds an ownership interest of 10 percent or greater.

c. **Contract and Grant Disclosure and Certification.** Any contract, or amendment to any contract, executed by the University which exceeds \$25,000.00 shall require the vendor to disclose information consistent with the terms of Arkansas Executive Order 98-04, and any amendments or replacements, and the regulations pursuant thereto. No contract, or amendment to any existing contract, that falls under Order 98-04, will be approved until the vendor completes and returns the disclosure form.

d. **Anti-Boycott Israel Notice.** In accordance with Ark. Code Ann. § 25-1-503, Vendor hereby certifies to University that Vendor (a) is not currently engaged in a boycott of Israel and (b) agrees for the duration of this Agreement not to engage in a boycott of Israel. A breach of this certification will be considered a material breach of contract. In the event that Vendor breaches this certification, University may immediately terminate this Agreement without penalty or further obligation and exercise any rights and remedies available to it by law or in equity.

22. **Technology.** Vendor agrees to the following:

a. **Electronic Downloading; Taxes.** To the maximum extent possible, Vendor shall offer University the option to receive any software via electronic delivery rather than in any physical medium. Vendor acknowledges that, under Ark. Code Ann. § 26-52-304, electronically delivered software is exempt from sales tax, and no tax-exempt certificate is required.

b. **Data.** "Data," as used herein, includes all electronic data, including but not limited to all Personally Identifiable Information (PII) and other nonpublic

information. Data includes, but is not limited to, student, faculty, and staff data, metadata, and user content.

c. **Data De-Identification.** Vendor may use de-identified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Vendor agrees not to attempt to re-identify de-identified Data and not to transfer de-identified Data to any party unless that party agrees not to attempt re-identification.

d. **Data Use, Collection, and Sharing.** Vendor will use Data only for the purpose of fulfilling its duties and providing services under this Agreement. Data may not be used by Vendor for any purpose other than the specific purpose(s) outlined in this Agreement. Vendor will only collect Data necessary to fulfill its duties as outlined in this Agreement. Data cannot be shared with any additional parties without prior written consent of the University except as required by law. Vendor will not change how Data is collected, used, or shared under the terms of this Agreement in any way without prior written consent from the University.

e. **Data Mining.** Vendor is prohibited from mining Data for any purposes other than those agreed to by the parties. Data mining or scanning of user content for the purpose of advertising or marketing to anyone, including but not limited to students or their parents, is prohibited.

f. **Data Transfer or Destruction.** Vendor will ensure that all Data in its possession and in the possession of any subcontractors, or agents to which the Vendor may have transferred Data, is destroyed or transferred to the University under the direction of the University when the Data is no longer needed for its specified purpose, at the request of the University.

g. **Rights and License in and to Data.** Parties agree that all rights, including all intellectual property rights, shall remain the exclusive property of the University, and Vendor has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give Vendor any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement. This includes the right to sell or trade Data.

h. **Access.** Any Data held by Vendor will be made available to the University upon request by the University.

i. **Security Controls.** Vendor will store and process all Data in accordance with industry best practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. Vendor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor will also have a written incident response plan, to include prompt notification of University in the event of a security or privacy incident, as well as best practices for responding to a breach of PII. Vendor agrees to share its incident response plan with University upon request. In addition, Vendor shall defend, indemnify, and hold harmless

University, its agents, officers, board members, and employees from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to any security or privacy incident.

j. **Location.** Vendor represents and warrants to University that Vendor shall not: (a) perform any of its obligations from locations or using employees, contractors and/or agents, situated outside the United States, or (b) directly or indirectly (including through the use of subcontractors) store or transmit any Data outside the United States, nor will Vendor allow any Data to be accessed by Vendor's employees, contractors and/or agents from locations outside the United States, without prior written consent of the University.

k. **Web Site Accessibility.** Vendor represents that web-based services substantially comply with the accessibility guidelines of Section 508 of the Rehabilitation Act of 1973 and with Web Content Accessibility Guidelines (WCAG) Version 2.0 Level AA, and agrees to promptly respond to and resolve any accessibility complaints received from University.

l. **Information Technology Access.** When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Vendor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that system meets the statutory requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

ACCORDINGLY, THE VENDOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) or similar documentation to demonstrate compliance with 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications) that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

- Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means;
- Presenting information, including prompts used for interactive communications, in formats intended for non-visual use;

- After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;
- Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
- Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact;
- Integrating into networks used to share communications among employees, program participants, and the public; and
- Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

If the information technology product or system being offered by the Vendor does not completely meet these standards, the Vendor must provide an explanation within the Voluntary Product Accessibility Template (VPAT) detailing the deviation from these standards.

State agencies cannot claim a product as a whole is not commercially available because no product in the marketplace meets all the standards. If products are commercially available that meet some but not all of the standards, the agency must procure the product that best meets the standards or provide written documentation supporting selection of a different product.

For purposes of this section, the phrase “equivalent access” means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

As provided in Act 308 of 2013, if the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

All State of Arkansas electronic and information technology purchases must be accessible as specified by standards listed in Arkansas Act 308. A copy of the act is available here: <ftp://www.arkleg.state.ar.us/acts/2013/Public/ACT308.pdf>.

23. **Durable Provisions.** The parties agree that this Addendum shall control over the original and any revisions or amendments to the Agreement and any terms of use, terms of

service, terms and conditions, click-through provisions, or shrinkwrap provisions.

Any change, modification, or waiver of any term of this Agreement will not be valid unless it is in writing and signed by an authorized official of both the University and Vendor.

Agreed:

**Board of Trustees of the University
of Arkansas, acting for and on behalf
of the University of Arkansas, Fayetteville**

[Vendor's Full Legal Name]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____