

University of Arkansas 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 "Board ") and the undersigned vendor (the "Vendor"), dated the _____ day of _____, _____ (the "Agreement") and shall take precedence over any conflicting terms in 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 a tribunal located in the State of Arkansas. In accordance with Article 5, § 20 of the Arkansas Constitution and Arkansas Code Annotated § 19-10-204, the parties agree that the Arkansas State Claims Commission has exclusive jurisdiction over any claims for damages against the Board. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
2. **Arbitration.** Any agreement or term providing for binding arbitration is deleted.
3. **Liability of the Board.** Pursuant to Article 12, § 12 of the Arkansas Constitution, the Board may not enter into a covenant or agreement to hold a party harmless or to indemnify a party from damages or liability. Therefore, any provisions of the Agreement requiring the Board to indemnify Vendor are deleted in their entirety.
4. **Warranty.** Vendor hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship and material; that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which furnished hereunder. Vendor further guarantees that if the items furnished hereunder are to be installed by the Vendor, that such items will function properly when installed.
5. **Indemnification.** 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 harmless the Board, its agents, officers, 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 the Agreement, including but not limited to any claims pertaining to or arising from Vendor's negligence, intentional acts or omissions, or from Vendor's unauthorized sale, license or use of a trademark, patent, copyright, process, idea, method, device or software. Any language addressing dollar limitations on Vendor's liability does not apply to Vendor's obligation to indemnify the Board against third-party claims.
6. **Liability.** Any provisions stating that the Board agrees to be responsible for the acts or omissions of anyone other than its employees acting in their official capacity are deleted in their entirety.
7. **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 Board paid for the product or service. In no event shall

the liability of Vendor be limited for intentional torts, criminal acts, fraudulent conduct or gross negligence.

8. **Immunities.** Nothing in this Agreement shall be deemed or construed as a waiver of the sovereign immunity of the Board, or any other immunities available to the Board or its officers, agents and employees.

9. **Interest.** Pursuant to Ark. Code Ann. § 19-11-224 no interest or late fees shall accrue until amounts are 60 days past due, and any contrary provision of the Agreement is deleted.

10. **Attorneys' Fees.** Any provisions requiring the Board 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.

11. **Insurance.** Any provisions stating that the Board 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 Board does not maintain commercial or general liability insurance.

12. **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.

13. **Marks and Logos.** Vendor acknowledges that the Board's marks and logos are the exclusive property of the Board. The parties agree that this Agreement does not transfer, license, or allow any use of the Board's marks or logos. Any use of the Board's marks or logos must be separately approved by the Board in advance and in writing.

14. **Israel Boycott Prohibition.** In accordance with Ark. Code Ann. § 25-1-503, Vendor hereby certifies to the Board that Vendor (a) is not currently engaged in a boycott of Israel and (b) agrees for the duration of the Agreement not to engage in a boycott of Israel.

15. **Chinese Government Ownership.** Vendor certifies that the government of the People's Republic of China ("PRC") does not wholly own Vendor or hold a majority interest in Vendor. Vendor further certifies that the PRC does not own or hold a majority interest in a for-profit parent company, subsidiary or affiliate of Vendor or in a subcontractor to be employed by Vendor.

16. **Certain Industry Boycotts.** In accordance with Ark. Code Ann. § 25-1-1002, Vendor certifies that it is not currently engaged in a boycott of the energy, fossil fuel, firearms and ammunition industries and agrees for the duration of its agreement not to engage in a boycott of the energy, fossil fuel, firearms or ammunition industries. The preceding does not apply to: (i) a financial services provider as defined at Ark. Code Ann. § 25-1-1001(8)(A), (ii) an agreement with a total potential value of less than \$75,000, or (iii) a contract under which the Vendor's price for the goods or services is at least 20% less than the lowest certifying business.

17. **Non-discrimination.** Vendor agrees that it will not discriminate against any qualified employee or qualified applicant for employment based upon race, religion, sex, gender or gender identity, color, disability, national origin, or ancestry.

18. **Confidentiality of student education records.** To the extent that Vendor has or will have access to student education records, 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.

19. **Liens.** Property of the Board may not be subjected to liens or security interests. Any provision of the Agreement that purports to impose a lien or security interest is deleted.

20. **Addendum Supersedes other terms.** The parties agree that this Addendum shall control over all other terms of the Agreement, including any revisions or amendments to the Agreement and any of Vendor's terms of use, terms of service, terms and conditions, click-through provisions, or shrinkwrap provisions.

21. **Amendment to the Agreement.** The Agreement, including this Addendum, shall not be altered or amended other than an agreement in writing signed by the parties hereto.

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: _____