**MONTANA STATE UNIVERSITY**

**Agreement Addendum – Required University Terms**

The following terms and conditions are hereby included and incorporated into the Agreement (the “Agreement”) between Montana State University ("MSU" or the "University") and the undersigned vendor (the “Vendor”). The following terms and conditions shall take precedence over any conflicting terms in the Agreement (including any conflicting terms in any addenda, exhibits, website links, or other documents and communications), regardless of any other provision regarding priority of documents or precedence in the parties’ Agreement:

1. **Term.** The term of the Agreement shall be for the term mutually agreed upon in the Agreement. In the event no term is stated in the Agreement, the Agreement shall expire no later than one (1) year from the date of the Agreement. Any reference to an automatic renewal of the term of the Agreement is deleted. All renewals shall be in writing and agreed to by the parties. The entire term of the Agreement, including all renewals, must comply with the term limitations of Section 18-4-313, MCA.

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 Montana (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 Montana. In accordance with Sections 18-1-401 and 18-1-403, MCA, the parties agree that the district courts of the state of Montana shall have exclusive original jurisdiction to hear, determine, and render judgment on any claim or dispute arising out of the Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
2. **Arbitration.** Any provision which requires the University to submit to binding arbitration is deleted in its entirety.
3. **Disputes.** Any dispute arising under or resulting from this Agreement that is not resolved within sixty (60) calendar days by authorized representatives of University and Vendor shall be brought to the attention of Vendor’s Chief Executive Officer or President (or designee) and University’s Vice President for Administration & Finance for resolution. If this informal dispute resolution process is unsuccessful, Vendor may request that the University President participate in the dispute resolution process, at the discretion of the University President. If the parties remain unable to reach a resolution, the parties may pursue all remedies not inconsistent with this Agreement.
4. **University Indemnification.** The University may not enter into an agreement to hold a party harmless or to indemnify a party from prospective damages. Therefore, any provisions requiring the University to indemnify, hold harmless, or defend Vendor are deleted in their entirety. University shall be liable only for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent required by law following adjudication and a final determination by a court of competent jurisdiction. With respect to loss, expense, damage, liability, claims or demands arising from the negligence or misconduct of the University, University agrees that it will cooperate with Vendor in the defense of any action or claim brought against Vendor seeking the foregoing damage or relief, provided, however, the University reserves its right to assert in good faith all claims and defenses available to it in any proceeding.
5. **Vendor Indemnification.** Vendor shall indemnify, defend and hold harmless the State of Montana, the Montana State University, and their respective officers, agents and employees from any and all claims and losses accruing or resulting to any other person, firm or corporation furnishing or supplying work, service, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation related to, arising out of or resulting from Vendor’s performance of this Agreement.
6. **Intellectual Property Indemnification.** Vendor shall indemnify, defend and hold harmless the State of Montana, the Montana State University, and their respective officers, agents, and employees from any and all third-party claims, costs (including without limitation reasonable attorneys’ fees), and losses for infringement or violation of any intellectual property right by any product or service provided by Vendor. With respect to claims arising from computer hardware or software manufactured by a third party and sold by Vendor as a reseller, Vendor will pass through to MSU, in addition to the foregoing provision, such indemnity rights as it receives from such third party and will cooperate in enforcing them; provided that if the third-party manufacturer fails to honor the third party obligation, Vendor will provide MSU with indemnity protection.
7. **Limitations of Liability.** Any provision disclaiming direct damages caused by Vendor’s negligence, misconduct, or breach of contract is deleted. In no event shall the liability of Vendor be limited for intellectual property infringement, confidentiality obligations, intentional torts, criminal acts, fraudulent conduct, or gross negligence.
8. **Rights in Work Product.** All inventions, discoveries, intellectual property, technical communications and records originated or prepared by University pursuant to this Agreement (including without limitation reports, charts, computer programs, inventions, copyrightable works, and other documentation or improvements thereto), shall be the sole and exclusive property of the University. Any provisions requiring the University to assign, transfer, convey or otherwise grant to the Vendor any rights to such inventions, discoveries, intellectual property, technical communications or records are deleted in their entirety. Similarly, any provisions which purport to assign ownership to such inventions, discoveries, intellectual property, technical communications and records to Vendor are null and void and shall be deleted in their entirety.
9. **Examination and Audit.** Any provisions which require the University to pay for or reimburse the cost of any audit are deleted in their entirety.
10. **Change in Terms.** Any provision which permits or otherwise allows the Vendor to change, modify or amend the terms of this Agreement absent a writing signed by the parties is deleted in its entirety.
11. **Insurance.** As an agency of the State of Montana, University is self-insured according to Montana law. The statutory limits of liability are $750,000 for each claim and $1.5 million for each occurrence. Any provision of the Agreement requiring University to purchase or maintain any form of insurance beyond that required by Montana law is deleted. Any provision of the Agreement which requires University to name a non-University party as an additional insured or waive subrogation is deleted.
12. **Warranty.** In addition to any warranties provided in the Agreement, Vendor warrants the products and services subject to this Agreement will be provided in a professional manner consistent with industry standards and any provided documentation describing the goods or services.
13. **Attorneys’ Fees.** Any provisions requiring the University to pay Vendor’s attorneys’ fees are deleted in their entirety. University shall pay attorney’s fees and other costs only in accordance with Section 25-10-711, MCA.
14. **Interest.** In accordance with Section 17-8-242, MCA, University shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if University fails to make timely payment.
15. **Assignments**. This Agreement is not assignable nor the duties hereunder delegable by a party without the written consent of the other party.
16. **University Confidential Data.** To the extent applicable, Vendor shall protect and maintain all University Confidential Data and any information derived therefrom in strict confidence. Specifically, and without limiting the generality of the foregoing, Vendor shall protect and maintain any and all data and information of University students and employees consistent with applicable federal and state privacy regulations and shall cooperate fully with University in any request for information verifying such compliance. Vendor’s transmission, transportation, or storage of Confidential Information outside the United States, or access of Confidential Information from outside the United States, is prohibited except with prior written authorization by University. University Confidential Data shall be defined as: 1) data designated by the University to Vendor as confidential; 2) data subject to state or federal privacy laws, including without limitation the Family Education Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g, 34 C.F.R. 99, MT Const. Art. II § 10, MCA § 30-14-1704 ; or 3) data that would be considered by a reasonable person to be confidential given its content and the circumstances of its disclosure. University’s Expanded Data Security Terms will control if incorporated into the Agreement.
17. **Use of Data.** Vendor shall not utilize any non-public University information (including without limitation information related to University’s employees, agents, representatives, students, systems, curricula or processes) for pecuniary gain not contemplated by this Agreement, regardless of whether Vendor is or is not under contract at the time such gain is realized. University specific information contained in the report, survey, or other product developed by Vendor pursuant to this Agreement is the property of the University and shall not be used in any manner by Vendor unless authorized in writing by the University.
18. **University Trademarks.** Vendor may not use any University trademarks, service marks, logos, symbols, designs, or other marks without prior written approval from the University Communications office. Nothing in this Agreement shall be construed as conferring on any party the right to use the other party’s name, marks, logos or designs as an endorsement of a product or service or to advertise, promote or otherwise market any product or service without the prior written authorization of the other party.
19. **Accessibility Requirements**. Vendor warrants it will comply with federal disabilities laws and regulations and, if applicable, warrants that the products and services provided under the Agreement conform to the applicable accessibility requirements of WCAG 2.0 AA, Section 508 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products and services. If products provided under this Agreement do not fully conform to WCAG 2.0 A and AA, Vendor shall advise University in writing of the nonconformance prior to execution of this Agreement and shall provide University a plan to achieve conformance to WCAG 2.0 A and AA, including but not limited to, an intended timeline for conformance. Vendor further agrees to indemnify and hold harmless University from any claims arising out of its failure to comply with the requirements of this section. Failure to comply with these requirements shall constitute a material breach of this Agreement and shall be grounds for termination of this Agreement by University.
20. **Compliance with Laws**. Vendor agrees to comply with any and all applicable Federal and State laws, including the following laws pertaining to non-discrimination: Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.
21. **Access to Records**. Vendor shall provide the University, State of Montana, Montana Legislative Auditor, or their authorized agents, access to any records related to this Agreement that are necessary to determine contract compliance. The University may immediately terminate this contract without incurring liability for the Vendor’s refusal to allow access as required by this section, in accordance with Section 18-1-118, MCA.
22. **University Employment**. Any provision prohibiting or penalizing University for hiring an employee of Vendor is deleted. University shall follow all applicable law and university policy for the hiring of public employees.
23. **Reduction of Funding.** The University must by law terminate this contract if funds are not appropriated or otherwise made available to support the University's continuation of performance of this contract in a subsequent fiscal period. The University, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. Section 18-4-313(4), MCA. The University shall provide Vendor the date the termination shall take effect. The University shall be liable only for the payment, or prorated portion of that payment, owed to Vendor as of date of termination. This is Vendor's sole remedy.
24. **Integration.** 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, end user license agreements, or click-through 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**:

**Montana State University Vendor**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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