**The University of Alabama at Birmingham**

**GOODS AND/OR SERVICES PURCHASE AGREEMENT**

This Purchase Agreement (“Agreement”) is by and between The Board of Trustees of The University of Alabama for The University of Alabama at Birmingham (“University”), a constitutionally created public corporation of the State of Alabama, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Vendor”) (collectively the “Parties”, individually a “Party”), and is subject to the terms and conditions set forth below:

**Section 1: Provision of Goods and/or Services:**

1.1 Statement of Work/Exhibit A. Vendor agrees to provide to University the materials, supplies, equipment or other goods (“Goods”) and/or services (“Services”) specified in attached Exhibit A.

1.2 Compliance With Laws and Policies.Vendor’s supply of the Goods and/or performance of the Services shall be in compliance with all applicable standards and industry codes and all applicable federal, state and local laws, ordinances and regulations. Vendor shall possess or obtain all licenses and permits necessary for the supply of the Goods and/or performance of the Services at its expense. If Vendor or its agents, subcontractors or employees will visit University’s campus in the performance of this Agreement, Vendor agrees that they will comply with University’s policies while present on campus.

1.3 Inspection.The Goods and/or Services provided will be exactly as specified in the Agreement, free from all defects in Vendor’s performance, design, workmanship and materials, and, except as otherwise provided herein, will be subject to inspection and test by University. If, prior to final acceptance, any Goods and/or Services furnished are found to be incomplete, or not as specified, University may reject them, require Vendor to correct them without charge, or require provision of such Goods and/or Services at a reduction in price that is equitable under the circumstances.

1.4 Occurrence.In the event of any occurrence which is expected to result in the Goods being provided or the Services being performed in a timeframe different from the timeframe specified in this Agreement, or any occurrence which will result in the Goods and/or Services failing to conform to the terms of this Agreement, Vendor shall inform University of this occurrence in writing within forty-eight (48) hours of becoming aware of the occurrence, and shall state the steps being taken to minimize the effect of the occurrence on the supply of the Goods and/or performance of the Services. In such event, Vendor shall take all steps necessary to expedite the performance of the Services and/or cause the Goods to conform with the terms of this Agreement.

**SECTION 2: PAYMENT; PAYMENT SCHEDULE:**

2.1 Payment for Work; Payment Schedule /Exhibit B**.** University will pay Vendor for the Goods and/or Services based on the Fee Schedule detailed in attached Exhibit B**.** Unless otherwise contested by University, University shall make payment(s) to Vendor within thirty (30) days of receipt of invoice from Vendor. Total compensation shall not exceed the designated amount set forth in Exhibit B without additional written agreement of the Parties. Vendor and its officers, employees, and agents will adhere to University’s policies for reimbursement of travel expenses found at <https://www.uab.edu/financialaffairs/traveling/independent-contractor>.

2.2 Loss of Funding.Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Alabama State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, then University will issue written notice to Vendor, and University may terminate this Agreement without further duty or obligation hereunder. Furthermore, to the extent the Goods and/or Services are being funded by a third party such as a federal granting agency, performance by University under this Agreement may be dependent upon its receipt of funds from that third party. If funding is not received, University will issue written notice to Vendor, and University may terminate this Agreement without further duty or obligation hereunder. Vendor acknowledges that receipt of funds is beyond the control of University.

**SECTION 3: TERM AND TERMINATION:**

3.1 Term of the Agreement. This term of this Agreement shall be as set forth in Exhibit A, unless terminated earlier in accordance with Section 3.2 below or unless extended by written agreement of the Parties.

3.2 Termination. Notwithstanding anything to the contrary herein, University reserves the right to terminate this Agreement at any time by giving thirty (30) days written notice to Vendor. University shall pay Vendor’s reasonable expenses (applicable to the portion being terminated) up to the effective date of termination but shall not owe any payment for the Vendor’s lost profits or overhead (if any).

**SECTION 4: DATA; FERPA AND HIPAA COMPLIANCE; CONFIDENTIALITY:**

4.1 Ownership of University Data.The Parties agree and acknowledge that any data provided by University to Vendor in connection with the Goods and/or Services or data originating with University to which Vendor has access shall remain the exclusive property of the University. Vendor will not share any data obtained from University, or any Goods or Services created by Vendor with the use of University data, with other entities for any reason without first obtaining express, written consent from University authorizing such specific disclosure. Upon the expiration or earlier termination of this Agreement, or any portion thereof, Vendor shall provide University promptly with a copy of all data owned by University in a format to be designated in University’s reasonable discretion.

4.2 FERPA And HIPAA Compliance /Exhibit D.

1. To the extent that personally identifiable information regarding any student is shared with Vendor pursuant to this Agreement, the Parties agree to comply with the “FERPA Addendum to Goods and/or Services Purchase Agreement” attached hereto as Exhibit D, in order to comply with the Family Educational Rights and Privacy Act of 1974 (20 USC 1232(g)) as amended (“FERPA”). Vendor shall be considered a school official with a legitimate educational reason to have access to such protected information in compliance with this Agreement.
2. To the extent that any Protected Health Information is shared with Vendor pursuant to this Agreement, the Parties agree to comply with the terms of the Business Associate Agreement attached hereto as Exhibit D, the terms of which are applicable to Protected Health Information covered under HIPAA.
3. Vendor will ensure that all employees and/or contractors of Vendor with access or exposure to personally identifiable information of University students or Protected Health Information comply with the terms of the privacy addenda attached hereto as Exhibit D.

4.3 Alabama Breach Notifications Act Compliance. To the extent that the Vendor maintains, stores, processes or is otherwise permitted access to any data stored electronically or digitally on any computer system or other databasecontaining the *Sensitive Personally Identifying Information* of any Alabama resident in connection with the Vendor’s provision of services to University, the Vendor agrees to comply with all aspects of the Alabama Data Breach Notification Act of 2018 codified at *Ala. Code §§8-38-1, et. seq*. The Vendor agrees that, in addition to implementing reasonable security measures as required by the Alabama Data Breach Notification Act (including an appropriate disposal of records), the Vendor shall conduct a prompt and good faith investigation of potential *breaches of security*. In the event of a breach involving data stored in an electronic form, the Vendor shall notify the University as expeditiously as possible, but in no event later than ten (10) calendar days following the determination of the *breach of security* or reason to believe the breach occurred, to allow the University sufficient time to comply with its breach notification requirements under the Act. The Vendor understands that its failure to comply with the notification provisions of the Alabama Data Breach Notification Act constitutes a material breach of its agreement with the University and may subject the Vendor to the penalty provisions of the Alabama Deceptive Trade Practices Act, *Ala. Code §8-19-11*. For the purposes of this provision, italicized terms shall have the meaning ascribed in *Ala. Code §§8-38-2* and are set forth in Exhibit E attached hereto.

4.4Use of Confidential Information.

(a) *Use by Vendor of University Confidential Information*. During this Agreement, Vendor may have access to or otherwise receive Confidential Information from University. “University Confidential Information” means any and all information, including data, provided to or otherwise made available to Vendor by University in connection with Vendor’s provision of the Goods and/or Services, whether in electronic or other written format, provided by oral means, seen by Vendor through its presence on University campus or otherwise made available to Vendor by being provided access to University computer and operating systems. All University Confidential Information shall remain the exclusive property of University. During the term of this Agreement and for five (5) years after it is terminated or otherwise expires, and except as otherwise required by law or as permitted by this Agreement, Vendor shall not use University Confidential Information or disclose University Confidential Information to any third party; provided, however, that Vendor may disclose any University Confidential Information to its affiliates and representatives who: (i) need to know the University Confidential Information for the purpose of fulfilling the terms of this Agreement; (ii) are advised by Vendor of the terms of this Agreement; and (iii) are bound by restrictions regarding disclosure and use of University Confidential Information no less restrictive than those set forth herein. Vendor agrees to protect University Confidential Information using the same degree of care it uses to protect its own confidential information, but in any event, not less than a reasonable degree of care.

With respect to any data which forms part of University Confidential Information, at no time during the term of this Agreement or at any time after it expires or is otherwise terminated, will Vendor share any data obtained from University, or any Goods or Services created by Vendor with the use of University data, with other entities for any reason without first obtaining express, written consent from University authorizing such specific disclosure. To the extent University Confidential Information does not include any Personally Identifiable Information (as defined in FERPA) or Protected Health Information (as defined in the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated pursuant thereto (collectively, “HIPAA”)), Vendor may use aggregated, de-identified University data for its non-commercial purposes.

(b) *Use by University of Vendor Confidential Information*. To the extent Vendor discloses information that it considers proprietary to University during the term of this Agreement, University agrees to keep all Vendor Confidential Information completely confidential, and to refrain from sharing it with any third parties without the prior written consent of Vendor. “Vendor Confidential Information” is information provided to University by Vendor which is (i) marked as “confidential” at the time of disclosure; (ii) disclosed orally, identified at the time of such oral disclosure as confidential, and reduced to writing as “confidential” within thirty (30) days of such oral disclosure; or (iii) if not marked as “confidential” information that would be considered by a reasonable person in the relevant field to be confidential given its content and the circumstances of its disclosure. All Vendor Confidential Information shall remain the exclusive property of Vendor. During the term of this Agreement and for five (5) years after it is terminated or otherwise expires, and except as otherwise required by law or as permitted by this Agreement, University shall not use Vendor Confidential Information or disclose Vendor Confidential Information to any third party; provided, however, that University may disclose any Vendor Confidential Information to its affiliates and representatives who: (x) need to know the Vendor Confidential Information for the purpose of fulfilling the terms of this Agreement; (y) are advised by University of the terms of this Agreement; and (z) are bound by restrictions regarding disclosure and use of Vendor Confidential Information no less restrictive than those set forth herein. University agrees to protect Vendor Confidential Information using the same degree of care it uses to protect its own confidential information, but in any event, not less than a reasonable degree of care.

(c) *General.* Confidential Information shall not include information that: (i) is generally available to the public through no fault of the Party receiving it, its affiliates or their representatives, and without breach of this Agreement; (ii) is already in the possession of the receiving Party or its affiliates, without restriction and prior to any disclosure hereunder; (iii) is or has been lawfully disclosed to the receiving Party or its affiliates by a third party without obligation of confidentiality to the disclosing Party; (iv) is legally required to be disclosed by law, or to a regulatory agency or pursuant to an order of competent jurisdiction; provided that, the receiving Party shall provide immediate verbal and written notice to the disclosing Party prior to disclosure so that the disclosing Party is given an opportunity to seek a protective order to limit the scope of such disclosure; or (v) is released from confidentiality obligations by the express prior written consent of the disclosing Party. All provisions as to confidentiality shall be construed consistently with, and subject to, any applicable open records or freedom of information statutes that mandate disclosure of any documents or information.

(d) *Effect of Termination*. Upon the expiration or earlier termination of this Agreement, by either Party, both Parties shall, at the disclosing Party’s option, destroy or return to the disclosing Party, all tangible copies of the other Party’s Confidential Information in its possession, including all excerpts, summaries, photocopies, worksheets, electronic copies, or other reproductions or extracts thereof; provided, however, each receiving Party may retain one (1) archival copy of the other Party’s Confidential Information for the sole purpose of determining its obligations under this Agreement and one (1) electronic copy as part of its standard electronic back-up system. In addition, to the extent that Vendor in the course or providing the Goods and/or Services under this Agreement has control over any University Confidential Information, such as University data, Vendor shall provide University promptly with a copy of all such data owned by University in Vendor’s control, in a format to be designated in University’s reasonable discretion.

**SECTION 5: INTELLECTUAL PROPERTY:**

5.1 Intellectual Property, Copyright and Patents /Exhibit C.

1. *University Owns Intellectual Property Rights*. If Exhibit C is attached hereto, the University shall own the intellectual property rights to the Goods and/or Services and Exhibit C shall address those intellectual property rights**.** The Parties agree to comply with Exhibit C and it shall be incorporated by reference as if fully re-stated herein.
2. *Goods and/or Services When University Does Not Own Intellectual Property Rights*. If Exhibit C is not attached to this Agreement, the University shall not own the intellectual property rights to the Goods and/or Services. The Vendor shall not use any pre-existing copyrightable or trademarked images, writings, or other proprietary materials (collectively the "Pre-Existing Materials") in the Goods and Services without University’s prior written permission, which may be set forth in Exhibit A hereof or provided separately. In the event that Vendor uses any Pre-Existing Materials in the Goods and Services, Vendor represents and warrants that it has the right to grant to University, and University is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Goods and Services.
3. *General*. Should the Goods and/or Services become, or in Vendor’s opinion be likely to become, the subject of a claim of infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party, Vendor will provide written notice to University of the circumstances giving rise to such claim or likely claim. In the event that University receives notice of a claim of infringement, or is made a party to, or is threatened with being made a party to, any claim of infringement related to the Goods and/or Services, University will provide Vendor with notice of such claim or threat. Following receipt of such notice, Vendor will either (at Vendor’s sole election and expense) (i) procure for University the right to continue to use the affected portion of the Goods and/or Services; or (ii) replace or otherwise modify the affected portion of the Goods and/or Services to make them non-infringing, or (iii) obtain a reasonable substitute product for the affected portion of the Goods and/or Services, provided that, any replacement, modification or substitution under this paragraph does not effect a material change in the Goods’ and/or Services’ functionality. If none of the foregoing options is reasonably acceptable to University, University will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

5.2 University Marks/Logos and Other Indicia. Vendor acknowledges and agrees that University owns the rights to its name and the other symbols, domain names, trademarks, service marks, logos, and graphics associated with or referring to University (collectively the “Indicia”). Vendor shall not have any right to use any of the Indicia without the prior express written consent of University. Vendor hereby irrevocably assigns any domain name, trademark, or service mark registration it obtains or applies for utilizing the Indicia to University without compensation.

**SECTION 6: INSURANCE AND INDEMNIFICATION:**

6.1 Insurance. Vendor shall carry and maintain the following insurance policies or self-insurance coverage with the following basic minimum insurance limits:

|  |  |
| --- | --- |
| Worker’s Compensation  Workers’ Compensation – Statutory or On the Job Employee Benefits Program if Vendor is not required to have Worker’s Compensation Coverage by Statute  Employer’s Liability - $2,000,000.00 | Comprehensive General Liability  Each Occurrence - $2,000,000.00  Products-Complete Operations Aggregate - $2,000,000.00  Personal & Advertising -$2,000,000.00 injury  General Aggregate (per location) - $2,000,000 |

Automobile Liability

(*Required if Vendor uses an automobile during the performance of this Agreement*)

Bodily injury: $1,000,000.00 Each Person; $2,000,000.00 Each Occurrence

Property damage: Each occurrence limit of $2,000,000; $2,000,000.00 Combined Single Limit

Information Privacy and Security Liability Insurance (aka cyber risk or breach insurance)

$1,000,000 per claim and annual aggregate

Coverage should include:

• Privacy and security liability including network security liability

• Regulatory claims coverage

• Security breach response expenses

• Technology errors and omissions if contractor is providing professional IT services

Due to the nature of some projects, University reserves the right to require additional limits of liability coverage. The limits listed herein are minimum limits only. If Exhibit A, Scope of Goods and Services, requires additional limits, coverage or conditions, the additional requirements of Exhibit A shall be included in these requirements. **Prior to any activity commencing under this Agreement, Vendor shall deliver to University, a Certificate of Insurance or Coverage evidencing that all such policies or coverage are in force, and naming The Board of Trustees of The University of Alabama for The University of Alabama at Birmingham, and its respective trustees, directors, officers, employees, agents, and representatives as additional insured thereon**. The Certificate will provide for at least 30 days written notice of cancellation or non-renewal to the University. Policies will apply as primary as to the additional insured without any contribution from insurance or any self-funded program maintained by the Owner.

Policies may include a deductible, but the Vendor will be responsible for payment of that deductible on their own behalf and on behalf of the University as an additional insured. Unless precluded by law, all policies shall waive the right to recovery or subrogation against University and its respective trustees, directors, officers, employees, agents, and representatives. If any of the above-based insurance coverage is written on a claims-made form, it will continue for three (3) years following termination of this Agreement. Vendor shall maintain all insurance required under this Agreement for the entire term of the Contract. University shall have the right to inspect and approve Vendor’s insurance including review of the policies and all attachments upon request.

6.2 Indemnification. Unless caused by the negligence or willful misconduct of University, its affiliates or their employees, Vendor agrees to defend, release, discharge, indemnify, and hold harmless University, its affiliates, and their respective trustees, directors, officers, employees, agents, and representatives (the “University Indemnitees”), from any and all allegations or claims for personal injury, death, or property damage, and any other losses, damages, claims, suits, rights of action, costs, liabilities, charges or expenses, including attorney’s fees, that arise out of, are caused by, in connection with, or are related to the Goods and/or Services or this Agreement.

In the event that Vendor is a state or federal public entity that cannot agree to indemnify and defend pursuant to the laws applicable to it, the Parties agree to delete the requirement for Vendor to indemnify and defend. Instead, Vendor agrees to be responsible for any liability resulting from the negligent acts and omissions or willful misconduct of its employees, directors, agents and subcontractors.

**SECTION 7: VENDOR’S REPRESENTATIONS, WARRANTIES, CERTIFICATIONS AND OTHER COVENANTS:**

7.1 Representations and Warranties.Vendor represents and warrants, as an inducement to University to execute this Agreement (such representations and warranties shall survive any termination of the Agreement), that: (a) Vendor is financially solvent, able to pay all debts as they mature, and has sufficient working capital to provide the Goods and/or Services and perform all obligations required of it under this Agreement; (b) Vendor’s execution of this Agreement, and its performance hereof, is within its duly authorized powers; (c) Vendor possesses a high level of experience and expertise in providing goods and services such as the Goods and/or Services to be provided pursuant to this Agreement; and (d) Vendor will provide the Goods and/or Services with the care, skill and diligence in accordance with such experience and expertise.

7.2 Signature Authority.Vendor’s representative executing this Agreement represents and warrants that he or she is the duly appointed agent and representative of Vendor, with full authority to execute this Agreement, without any further requirements or approvals.

7.3 Boycotting Activities. By entering into this Agreement, in accordance with *Ala. Code § 41-16-5*, Vendor represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

7.4 Debarment and Suspension. Vendor warrants that it is not presently debarred, suspended, proposed for debarment, or declared ineligible for award of federal contracts, or participation in federal assistance programs or activities.

7.5 Disclosure Statement. By accepting payments agreed to in this Agreement, Vendor certifies that, to its actual knowledge, no University employee or official, and no family members of a University employee or official, will receive a benefit from these payments, except as has been previously disclosed, in writing, to University on the Vendor Disclosure Statement Vendor provides to the University.

7.6 Certification Pursuant to Alabama Code§ 41-4-116.Alabama law (*Ala. Code § 41-4-116 (1975)*) provides that every proposal submitted and agreement executed shall contain a certification that vendors, contractors, and all of their affiliates that make sales for delivery into Alabama or leases for use in Alabama are registered, collecting, and remitting Alabama state and local sales, use, and/or lease tax on all taxable sales and leases into Alabama. Vendor hereby certifies that, to the extent applicable, it is in full compliance with *Ala. Code § 41-4-116*; it is not barred from entering into this Agreement pursuant to *Ala. Code § 41-4-116*; and it acknowledges that University may declare the Agreement void if the certification is false.

7.7 Compliance With Alabama Code § 31-13-1*, Et Seq*.By entering into this Agreement, in compliance with the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, *Ala. Code § 31-13-1, et seq.,* Vendor affirms, for the duration of this Agreement, that it will not violate federal immigration law, or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, if Vendor is found to be in violation of this provision, Vendor shall be deemed in breach of this Agreement, and shall be responsible for all damages resulting therefrom. Furthermore, Vendor certifies that it will provide its one-page E-Verify Company Profile Document to University. During the performance of this Agreement, Vendor shall participate in the E-Verify Program, and shall verify every employee that is required to be verified according to applicable federal rules and regulations.

7.8 Press Releases.Vendor will not issue any press releases, advertise, nor post information concerning its relationship with University, the Goods and/or Services provided under this Agreement or this Agreement, without the prior written approval of University. University approvals can only be given by the University Relations Office.

**SECTION 8: GOVERNING LAW; DISPUTE RESOLUTION; VENUE:**

8.1 Governing Law, Dispute Resolution and Venue**.** Alabama law, without regard to its conflicts of law provisions, shall exclusively apply to this Agreement, its terms, questions of immunity related to University, and any disputes between the Parties. Any claim against University must be made through the State of Alabama Board of Adjustment. Exclusive jurisdiction and venue of any claims that are not barred by immunity, nor required to be filed before the State of Alabama Board of Adjustment, shall lie in the United States District Court for the Northern District of Alabama or the Circuit Court of Jefferson County, Alabama. In the event that Vendor is a state or federal public entity that cannot agree to Alabama governing law or Alabama venue and jurisdiction pursuant to the laws applicable to it, the Parties agree to remain silent with regard to provisions of governing law, jurisdiction and venue.

8.2 No Waiver of Sovereign Immunity.University does not waive, and specifically reserves, all immunities to which it is entitled under the constitution, laws, and statutes of the United States and the State of Alabama, including, without limitation, the immunities contained within *Article I, §14* of the Constitution of Alabama. Vendor, if Vendor is a governmental entity with sovereign immunity, specifically reserves all immunities to which it is entitled under the constitution, laws, and statutes of the United States and the state in which it is located. Any provision of this Agreement that may be considered a consent to suit or a waiver of immunity by University or Vendor, if Vendor is a governmental entity with sovereign immunity, is hereby stricken and rendered null and void.

8.3 Attorney and Collection Fees.Each Party shall be responsible for its own attorney’s fees in regard to enforcement or breach of this Agreement and its terms or fees for collection of any amounts due.

**SECTION 9: MISCELLANEOUS:**

9.1 Entire Agreement; Modifications.This Agreement, together with Exhibits A and B**,** and Exhibits C and D, if attached, and the terms and conditions of the Request for Bid and its attachments, which are incorporated into and are a part of this Agreement, supersede all prior agreements, written or oral, between Vendor and University, and constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof. In the event of a conflict, this Agreement shall supersede the terms and conditions of the Request for Bid. This Agreement and each of its provisions will be binding upon the Parties, and may not be waived, modified, amended or altered except by a writing signed by University and Vendor. For purposes of clarity, the Parties agree that any additional terms that Vendor includes in an order form or proposal, or by reference to a website, link in a “click-through” agreement or similar document or agreement, will be of no force and effect unless University specifically agrees to such terms in a written document executed by an authorized signatory of University.

9.2 Assignment. The rights of Vendor under this Agreement may not be assigned, and its obligations hereunder may not be delegated, without the prior written consent of University, which consent may be withheld for any reason. Notwithstanding the foregoing, this Agreement shall inure to the benefit of both Vendor's and University's successors and assigns.

9.3. Independent Contractor.Nothing in this Agreement, nor its terms, shall be deemed to make either Party, or any employee, agent, or representative of either Party, an employee, agent or representative of the other Party. The Parties acknowledge that Vendor is an independent contractor and has sole responsibility for and control over the design, content, accuracy, and quality of the Goods and/or Services.

9.4 Third-Party Beneficiary.This Agreement shall inure to the benefit of and be binding upon the Parties, their successors and assigns. No third-party beneficiary rights or benefits whatsoever are expressly or impliedly provided herein.

9.5 Legal Notices. A copy of any legal notice sent by Vendor regarding University, or received by Vendor from a third party and related to University, will also be sent to: University Procurement, University of Alabama at Birmingham, 801 Financial Services Building, 801 5th Avenue South Birmingham, AL 35233.

9.6 Survival.Notwithstanding termination of this Agreement or University's acceptance of the Goods and/or Services, any duty or obligation of Vendor which has not been fully observed, performed and/or discharged, and any right, unconditional or conditional, which has been created for the benefit of University and which has not been fully enjoyed, enforced and/or satisfied, shall survive such termination or acceptance until such duty or obligation has been fully observed, performed and/or discharged and such right has been fully enjoyed, enforced and/or satisfied, including, without limitation, Section 4.1: Ownership of University Data; Section 4.4: Use of Confidential Information; Section 5.1: Intellectual Property, Copyright and Patents; Section 5.2: University Marks/Logos and Other Indicia; Section 6.1: Insurance; Section 6.2: Indemnification; and Section 7.1: Representations and Warranties.

9.7 Severability. All of the terms, provisions, and conditions of this Agreement, and its terms, shall be deemed to be severable in nature. If for any reason the provisions hereof are held to be invalid or unenforceable to any extent, then, to the extent that such provisions are valid and enforceable, a court or tribunal of competent jurisdiction shall construe and interpret this Agreement, and its terms, to provide for maximum validity and enforceability.

9.8 Captions. The captions and headings in this Agreement are for convenience of reference only, and in no way define, limit, or describe the scope or intent of any provision or sections.

9.9 Counterparts. This Agreement may be executed in multiple counterparts (no one of which need contain the signatures of more than one Party hereto so long as each Party hereto executes at least one such counterpart), each of which shall be deemed an original, and all of which, when taken together, shall constitute and be one and the same instrument.

|  |  |
| --- | --- |
| University: | Vendor: |
| The Board of Trustees of the University of Alabama for the University of Alabama at Birmingham | [ ] |
| By: ­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Exhibit A**

Scope of Goods and/or Services

- Description of Goods and/or Services to be provided:

Vendor may use Pre-Existing Materials in the Goods and Services.

This Agreement shall begin on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and shall automatically expire on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In no event may the aggregate term exceed five (5) years.

Vendor will have access to FERPA Covered Data and Information and Protected Health Information as defined by HIPAA.

**Exhibit B**

FEE SCHEDULE

Total compensation to be paid pursuant to this Agreement shall not exceed $\_\_\_\_\_\_\_.

Invoices will be paid:

Payment period: Amount per payment period:

­\_\_\_\_\_\_\_\_Weekly ­­­­­­­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_Monthly \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_Quarterly \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_Annually \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_Upon completion of task(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* *Total compensation of $10,000 or more should be paid in multiple payments.*
* *Compensation should not be paid in full prior to services rendered; at least 10% should be held until the day of the event/services rendered or upon invoice after completion of services.*
* *Reimbursement of any travel-related expenses, if and only if such reimbursement is specifically permitted under this Agreement, will be in accordance with Alabama law and The University of Alabama at Birmingham’s travel policies (see* [*https://www.uab.edu/financialaffairs/traveling/independent-contractor*](https://www.uab.edu/financialaffairs/traveling/independent-contractor)*).*

**EXHIBIT C**

INTELLECTUAL PROPERTY, COPYRIGHT AND PATENTS

The University will not own any intellectual property rights pursuant to this Agreement.

**Exhibit D**

FERPA ADDENDUM TO GOODS AND/OR SERVICES PURCHASES AGREEMENT

and/or BUSINESS ASSOCIATE AGREEMENT

(see attached)

**FERPA ADDENDUM TO GOODS AND/OR SERVICES PURCHASES AGREEMENT**

The following terms and conditions of this Addendum are incorporated into and form a part of the UAB Goods and/or Services Purchase Agreement to which they are attached (the "Agreement") as if fully stated therein. Provisions in the Agreement that are consistent with this Addendum and serve to protect CDI as defined herein, will continue in full force and effect. In the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control. “Covered data and information” (“CDI”) includes paper and electronic student education record information supplied by the University, as well as any personally identifiable data provided by University students to Contractor.

University agrees that for purposes of Family Educational Rights and Privacy Act, 34 CFR §99.31(a)(1)(i)(A) (“FERPA”), Contractor will be considered a University official with a legitimate educational reason to have access to limited personally identifiable information from student records. Contractor agrees to abide by relevant privacy laws, including but not limited to the limitations on re-disclosure of personally identifiable information from education records set forth in **FERPA, and agrees to comply with the terms set forth below. 34 CFR 99.33(a)(2) states that the officers, employees and agents of a party that receive education record information from the University may use the information, but only for the purposes for which the disclosure was made.**

**Prohibition on Unauthorized Use or Disclosure of CDI**:  Contractor agrees to hold CDI in strict confidence and will only share CDI with those individuals within its organization who have a legitimate need to access such for the purpose of assisting Contractor fulfill its obligation to University under the terms of the Agreement.  Contractor shall not use or disclose CDI received from or on behalf of the University (or its students) except as permitted or required by the Agreement (including this Addendum), as required by law, or as otherwise authorized in writing by the University. Contractor agrees that it will protect the CDI it receives from or on behalf of the University according to commercially acceptable standards and no less rigorously than it protects its own confidential information. Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

**Prohibition on Use of CDI for Marketing and other Uses:**  Contractor acknowledges and agrees that CDI may not be used for marketing, product development, external or internal research (except as contemplated by the Agreement for or on behalf of University), or any other purpose without the express written consent of University.

**Return or Destruction of CDI**:  Upon termination, cancellation, expiration or other conclusion of the Agreement, Contractor shall return all CDI to the University or, if return is not feasible, destroy any and all CDI. If Contractor destroys the CDI, Contractor shall provide the University with a certificate confirming the date of destruction of the data.

**Remedies:** If the University reasonably determines in good faith that Contractor has materially breached any of its obligations under the Agreement or this Addendum, the University, in its sole discretion, shall have the right to require Contractor to submit to a plan of monitoring and reporting; to provide Contractor with a fifteen (15) day period to cure the breach; or to terminate the Agreement immediately if cure is not possible.  Before exercising any of these options, the University shall provide written notice to Contractor describing the violation and the action it intends to take. If the Student Privacy Policy Office of the U.S. Department of Education determines that Contractor improperly disclosed personally identifiable information obtained from the University’s CDI, the University may not allow Contractor access to its CDI for at least five years.

**Maintenance of the Security of Electronic Information**:  Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of the University or its students. These measures will be extended by contract to all subcontractors used by Contractor.

**Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information**:  Contractor shall, within one (1) day of discovery, report to the University any use or disclosure of CDI not authorized by the Agreement, this Addendum or in writing by the University. Contractor’s report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the University.

**Indemnity:** Contractor shall defend and hold the University harmless from all claims, liabilities, damages, or judgments involving a third party, including University’s costs and attorney fees, which arise as a result of Contractor’s failure to meet any of its obligations under this Addendum. In the event that Vendor is a state or federal public entity that cannot agree to indemnify and defend pursuant to the laws applicable to it, the Parties agree to delete the requirement for Vendor to indemnify and defend. Instead, Vendor agrees to be responsible for any liability resulting from the negligent acts and omissions or willful misconduct of its employees, directors, agents and subcontractors.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

THE BOARD OF TRUSTEES VENDOR

OF THE UNIVERSITY OF ALABAMA

FOR THE UNIVERSITY OF ALABAMA

AT BIRMINGHAM

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name Printed Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Date

**EXHIBIT E**

ALABAMA DATA BREACH NOTIFICATION ACT DEFINITIONS

*Breach of Security* is defined as follows:

The unauthorized acquisition of data in electronic form containing sensitive personally identifying information. Acquisition occurring over a period of time committed by the same entity constitutes one breach. The term does not include any of the following:

a. Good faith acquisition of sensitive personally identifying information by an employee or agent of a covered entity, unless the information is used for a purpose unrelated to the business or subject to further unauthorized use.

b. The release of a public record not otherwise subject to confidentiality or nondisclosure requirements.

c. Any lawful investigative, protective, or intelligence activity of a law enforcement or intelligence agency of the state, or a political subdivision of the state.

*Sensitive personally identifying information* is defined as follows:

a. Except as provided in paragraph b below, an Alabama resident's first name or first initial and last name in combination with one or more of the following with respect to the same Alabama resident:

1. A non-truncated Social Security number or tax identification number.

2. A non-truncated driver's license number, state-issued identification card number, passport number, military identification number, or other unique identification number issued on a government document used to verify the identity of a specific individual.

3. A financial account number, including a bank account number, credit card number, or debit card number, in combination with any security code, access code, password, expiration date, or PIN, that is necessary to access the financial account or to conduct a transaction that will credit or debit the financial account.

4. Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

5. An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.

6. A user name or email address, in combination with a password or security question and answer that would permit access to an online account affiliated with the covered entity that is reasonably likely to contain or is used to obtain sensitive personally identifying information.

b. The term does not include either of the following:

1. Information about an individual which has been lawfully made public by a federal, state, or local government record or a widely distributed media.

2. Information that is truncated, encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable, including encryption of the data, document, or device containing the sensitive personally identifying information, unless the covered entity knows or has reason to know that the encryption key or security credential that could render the personally identifying information readable or useable has been breached together with the information.