

**ADDENDUM TO PRINCIPAL AGREEMENT BETWEEN**  
**\_\_\_\_\_ BOARD OF EDUCATION AND**  
**\_\_\_\_\_ [NAME CONTRACTOR]**

WHEREAS, the \_\_\_\_\_ **Board of Education** (the “Board”) and \_\_\_\_\_ **NAME CONTRACTOR** (the “Contractor”) are entering or may have entered a contract or agreement for Contractor to furnish goods, services, materials or other consideration to the Board (collectively, (the “Consideration”) that is titled or concerns the following:

\_\_\_\_\_ TITLE OF PRINCIPAL AGREEMENT OR DESCRIPTION OF ARRANGEMENT \_\_\_\_\_  
Dated (or Effective) \_\_\_\_\_, 20\_\_\_\_

(the “Principal Agreement”);

WHEREAS, the Contractor may submit to or ask the Board to incorporate into the Principal Agreement certain forms, writings or documents containing provisions that violate applicable law (as defined herein) or are not consistent with procurement procedures utilized by the Board, or the Principal Agreement may fail to include other provisions that must be incorporated into contracts with public entities in Alabama; and

WHEREAS, in order to comply with procurement procedures applicable to the Board, Contractor and Board (which may be collectively referenced hereinafter as “Parties” or individually as a “Party”) desire to enter into this **Addendum to Principal Agreement** (the/this “Addendum”), and that this Addendum be annexed, incorporated into or otherwise made a part of the Principal Agreement.

**WHEREFORE**

In consideration for the covenants herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows>

1. **Definitions.** The defined terms used in this Addendum shall have the following meaning:
  - (a) The term “\_\_\_\_\_ Board of Education” or “Board” is a governmental entity duly organized under the laws of the State of Alabama, and includes its constituent departments, divisions, and its boards and agencies (if any).
  - (b) The term “Contractor” refers to the person, firm, or other legal entity that enters into an agreement or service arrangement with the Board to provide it goods, materials, services, work or other consideration. As used herein, Contractor includes all of its vendors, suppliers, and subcontractors.
  - (c) The term “Consideration” collectively refers to the goods, materials, services, work or other consideration provided by the Contractor pursuant to the Principal Agreement.
  - (d) The term “Principal Agreement” is the contract, agreement or other document(s) setting form the basic terms and conditions under which the Contractor is engaged to furnish Consideration to the Board. This term includes all exhibits,

attachments, other addenda or understandings and writings incorporated into or made a part of the Principal Agreement. For purposes of this Addendum, Principal Agreement also includes understandings or arrangements where vendors and suppliers may provide Consideration to the Board without a formal contract, writing or document, or where the Board may only issue a purchase order for goods or services.

(e) The term “Contractor Forms” shall mean any written contract, agreement, quotation, proposal, invoice or other written document or form of any type that Contractor has prepared and submits to the Board in connection with the Principal Agreement or it providing the Consideration contemplated therein.

(f) The term “Applicable Law” shall refer to the laws of the State of Alabama.

2. **Conflicting Provisions.** If any provisions, terms or conditions in this Addendum conflict or are inconsistent with those in Principal Agreement or in any Contractor Forms, the terms herein supersede, control and take precedence over the conflicting provisions in the Principal Agreement or Contractor Forms.

3. **Ineffective Provisions.** Contractor agrees that the following types of provisions, terms or conditions that may be expressed in the Principal Agreement or in any Contractor Forms are stricken, overridden by this Addendum, void and not enforceable as between the Parties, and that the provisions stated below in each respective subpart shall replace those ineffective provisions:

(a) Modification of Legal Rights, Remedies & Duties - any provisions that create or impose any duty or liability on the Board, or that confer or purport to confer greater rights or remedies on the Contractor than existing under Applicable Law;

(b) Limitation, Waiver or Reduction of Board Rights - any provisions that limit, reduce, restrict, waive or eliminate rights or remedies that would be available to the Board under Applicable Law if Contractor (or any person, firm, or entity in privity therewith or acting on Contractor’s behalf) defaults or fails to perform its obligations under the Principal Agreement. Notwithstanding, nothing in this Addendum or the Principal Agreement shall preclude the Board and Contractor from agreeing to limit, restrict or cap the amount of compensation or damages that a Party defaulting on its obligations under the Principal Agreement would compensate the non-defaulting party and that arise from the defaulting Party’s breach or failure to perform;

(c) Indemnification - any provisions that obligate the Board to indemnify or hold Contractor (or its affiliates, officials, employees or sub-contractors) harmless for any damages, costs, losses, fees, expenses, actions, liability or claims asserted by third parties against Contractor that relate to the Principal Agreement (hereinafter “Claims”). Notwithstanding any such provision in the Principal Agreement, Contractor agrees that the Board shall not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any Claims arising out of or relating to the Primary Agreement or the performance or nonperformance thereof;.

(d) Insurance - provisions that obligate the Board to purchase or maintain any particular type or amount of general liability, workers compensation, employer's liability, automobile, property, casualty or other insurance with respect to the transactions contemplated in the Primary Agreement, or to maintain any particular insurance or risk management program. Notwithstanding any such provision in the Principal Agreement, nothing shall preclude the Board from actually purchasing a specific type of insurance requested by Contractor in connection with the transaction contemplated in the Primary Agreement;

(e) Governing Law – any provisions designating the law of any state, country, territory or jurisdiction other than Alabama as the governing law. Notwithstanding any such provision in the Principal Agreement, Contractor agrees that the meaning, legal effect, and enforcement of terms and provisions of the Primary Agreement and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama;

(f) Venue – any provision that selects the courts or tribunals in any county, state or jurisdiction outside Alabama as the place for litigation or resolution of a dispute relating to the Principal Agreement. Notwithstanding any such provision in the Principal Agreement, Contractor agrees the venue of any such suit, action, or legal proceeding brought to enforce or secure relief shall be Shelby County, Alabama, except to the extent otherwise required by applicable principles of law or if the courts in that County lack jurisdiction;

(g) Alternative Dispute Resolution - any provisions obligating the Board to arbitrate, participate in mandatory mediation proceedings, or engage in other alternate dispute resolution processes as a means of resolving disputes related to the Primary Agreement. Notwithstanding any such provision in the Principal Agreement, the Parties may agree to participate in non-binding mediation of a dispute to be conducted on terms and conditions that they negotiate;

(h) Attorney's Fees; Court Costs; Litigation Expenses – any provisions making the Board responsible or liable for attorney's fees, court costs, litigation expenses, and like charges that may be incurred in the course of resolving disputes or claims related to the Principal Agreement, except and to the extent such fees, costs, and charges would be assessed against the Board under Applicable Law in the absence of any contractual provision imposing or assigning liability therefor; and

(i) Late Payment Charges; Fees; Interest – any provisions that (1) obligate the Board to pay any late payment charges, interest, penalties or fees with respect to its failure to timely pay Contractor invoices or bills for goods, materials, or services, or (2) stipulating that a bill or invoice shall be considered delinquent if not paid by the Board earlier than thirty (30) days after Contractor renders such an invoice or bill. Nothing in the Principal Agreement shall preclude Contractor, in a final order issued by a proper tribunal, from recovering any pre-judgment or post-judgment interest that is assessable under Applicable Law for Board's failure to timely pay an invoice for goods or services.

4. **Additional Provisions.** The following provisions shall be added and incorporated into the Principal Agreement:

(a) Immigration Law Compliance. Contractor represents and warrants that (a) it does not knowingly employ, hire for employment, or continue to employ an “unauthorized alien,” as defined by the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56), as amended from time to time (the “Act”) and that, during the performance of this Contract, it shall participate in the E-Verify program as required under the terms of the Act; (b) it will comply with all applicable provisions of the Act with respect to its contractors by entering into an agreement with or obtaining an affidavit from such contractors providing that such contractors are in compliance with the Act with respect to their participation in the E-verify program; and (c) it shall not hire, retain or contract with any contractor that it knows is not in compliance with the Act. The Contractor further agrees and warrants that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, in its hiring and employment practices, and that if it receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from performing the Services or premises of the Board and shall require each of its contractors, or other parties with whom it has a contract, to act in a similar fashion. If the Contractor violates any term of this paragraph, the Primary Agreement will be subject to immediate termination by the Board. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the Board from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to its failure to fulfill its obligations contained in this paragraph.

(b) Open Trade. Pursuant to Ala. Code § 41-16-5 (1975), Contractor represents and agrees that, by entering the Principal Agreement, 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.

(c) Exclusion of Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION IN THE PRINCIPAL AGREEMENT, CONTRACTOR AGREES THAT, IN THE EVENT IT MAKES OR ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE BOARD ARISING FROM ITS ALLEGED BREACH OF THAT AGREEMENT OR ITS FAILURE TO PERFORM ITS OBLIGATIONS THEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE BOARD AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE CONTRACTOR'S ACTUAL, DIRECT DAMAGES ARISING FROM THE BOARD'S BREACH. CONTRACTOR AGREES AND ACKNOWLEDGES THAT THE TERMS IN THIS PROVISION WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT BOARD WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THE INCLUSION OF THIS LIMITATION. IN NO EVENT WILL THE BOARD BE LIABLE TO CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST ADVANTAGE, LOST OPPORTUNITY, LOSS OF SAVINGS OR

REVENUES OR FOR INCREASED COST OF OPERATIONS) ARISING FROM ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY BOARD.

(d) Safety at Board Sites. Contractor agrees that, before its employees, workers or authorized subcontractors perform any services, work or operations related to the Principal Agreement on any property owned or controlled by the Board (the “Board Sites” or “Site(s)”), Contractor (i) will inspect each such Site, (ii) agrees that it has the sole responsibility to identify any condition or hazard thereon that will prevent it or any of its personnel from safely performing the services on Board property, and (iii) agrees that it and its personnel are responsible for performing its services in a safe manner that does not put at risk the safety of other persons or endanger property. The Board makes no representations concerning the condition of any of the Sites, whether any Site contains any latent or patent defects, or whether any Site is otherwise fit and safe for the Contractor’s operations or the performance of its services or work thereon. Additionally, the Contractor exclusively is responsible for the safety of its employees, personnel, subcontractors or other representatives while any of them are performing services or work at a Site.

5. Term of Addendum. The term of this Addendum shall run concurrent with that of the Principal Agreement. It shall remain in full force and effect if the Parties amend, extend, or supplement the Principal Agreement, whether or not they expressly acknowledge, reference or incorporate this Addendum at the time of any such amendment, extension or supplementation.

6. Modification. No official, agent, employee, or representative of the Board is authorized to modify, waive or suspend the operation of this Addendum or any of its terms or provisions without the express approval of the Board.

DATED this \_\_\_ day of \_\_\_\_\_, 202\_\_.

**[INSERT CONTRACTOR NAME]**

\_\_\_\_\_ **BOARD OF EDUCATION**

By : \_\_\_\_\_

By : \_\_\_\_\_

Its : \_\_\_\_\_

Its : \_\_\_\_\_

January 2021