

**ADDENDUM TO ZEARN MASTER SERVICES AGREEMENT, TERMS OF USE,
AND PRIVACY POLICY**

This Addendum (“Addendum”) amends and supplements the Zearn Master Services Agreement, Agreement-0040461-1 between Zearn and Murfreesboro City School, Zearn’s Terms of Use, Privacy Policy, any quote, order form, purchase order, add-on service terms, attachments, exhibits, schedules, incorporated documents, and any click-through, clickwrap, shrink-wrap, online, or other electronic terms applicable to the Services (collectively referred to herein as the “Agreement”). Zearn is referred to herein as “Contractor,” and Murfreesboro City Schools is referred to herein as “District,” “Customer,” or “Account Holder.” In consideration of using Contractor’s form agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is acknowledged, the Agreement is amended as follows:

1. **Precedence.** Notwithstanding any other provision in the Agreement, including without limitation Section 6.1 of the Master Services Agreement or any provision stating that the Master Services Agreement, Terms of Use, Privacy Policy, purchase order, online terms, or other incorporated document controls, this Addendum shall control over any conflicting or inconsistent term. The parties agree that this Addendum is part of the Agreement and is intended to modify and supersede all contrary terms.

2. **Indemnity, Limitation of Liability and Disclaimer of Warranty.** Article II, Section 29 of the Tennessee Constitution prohibits governmental entities from lending their credit to private entities and, therefore, prohibits an agreement by Customer to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring Customer to indemnify or hold harmless Contractor or any other person or entity and any limitation of liability in favor of Contractor is deleted. No provision of this Agreement shall act or be deemed a waiver by Customer of any immunity, including its rights or privileges afforded by the Tennessee Constitution or state law including but not limited to any provision of the Tennessee Governmental Tort Liability Act, T.C.A. section 29-20-101 et seq. Because Tennessee law may not allow Customer to agree to the disclaimer of warranties any such disclaimer of warranties shall be enforceable only to the extent permitted by Tennessee law, and Customer reserves all rights afforded to local governments under law for all general and implied warranties.

3. **Confidentiality.** The Agreement is a public record, and it, along with all documents or materials, in any format, including, but not limited to, paper, electronic, or virtual, that are public records pursuant to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq., are not confidential and are subject to disclosure in whole or in part, without regard to any provision contained in the Agreement declaring information confidential. Additionally, Customer must, upon proper request, release public documents and records as defined by T.C.A. §10-7-503 et seq., including, but not limited to, the Agreement and all records created and maintained related to the Agreement, without any requirement to disclose such request to Contractor or provide Contractor with notice or the time to obtain a protective order. Customer does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 3 serves to meet such burden and authorization of disclosure.

4. **Termination for Convenience.** District or Contractor may terminate the Agreement and

use of the service at any time for any reason. However, termination shall not take effect until sixty (60) days after written notice is delivered by the party terminating the agreement to the other party. Such termination will not be deemed a breach of contract by either party. Should District exercise this provision, District will compensate Contractor for Services properly provided through the effective date of termination, and Contractor will refund to District any prepaid amounts attributable to Services not provided after the effective date of termination.

5. **Refunds; Non-Refundable Payment Terms.** Any provision stating that payments are non-refundable, that District is responsible for full payment regardless of termination, or that Contractor may retain prepaid amounts for Services not provided is amended to the extent necessary to conform to this Addendum, including the provisions regarding termination, non-appropriation, taxes, warranties, and refunds.

6. **Accessibility.** Contractor warrants that to the extent applicable its services conform to the accessibility guidelines, including, but not limited to, supporting assistive software or devices such as large-print interfaces, text-to-speech output, refreshable braille displays, voice-activated input, and alternate keyboard or pointer interfaces, established by the World Wide Web Consortium's Web Content Accessibility Guidelines 2.1 (WCAG 2.1), WCAG 2.1 AA, or any successor standard required by applicable law, including WCAG 2.2 AA where applicable, and implementing regulations set forth in 36 C.F.R. Part 1194. Contractor shall provide Customer a current completed Voluntary Product Accessibility Template (VPAT) to detail compliance with the federal Section 508 standards. Contractor shall promptly respond to and resolve any complaint regarding accessibility of its products or services. Contractor further agrees to indemnify and hold harmless Customer from any claims arising out of Contractor's failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach of the Agreement.

7. **Governing Law.** The Agreement and the rights and obligations of the parties are governed by the laws of the state of Tennessee, without regard to its conflict of laws principles.

8. **Selection of Jurisdiction, Waiver of Jury Trial, Venue, Service of Process.** Pursuant to the Constitution and Laws of the State of Tennessee, Customer is a sovereign entity subject only to those courts with jurisdiction over District. If a dispute arises between the parties concerning any aspect of the Agreement, and it cannot be resolved by mutual agreement, any party may resort to resolution of the dispute by litigation in the state courts in Murfreesboro, Tennessee, or the Federal court for the Middle District of Tennessee. However, neither party shall be obligated to provide any type of pre-suit notice before initiating a cause of action. The parties waive their right to a jury trial. The parties hereby consent to the mandatory and exclusive venue and jurisdiction of the state court located in Murfreesboro, Tennessee, or the Federal court for the Middle District of Tennessee. Service of process on Customer shall comply with the Tennessee Rules of Civil Procedure or applicable federal rules, and Customer does not agree to any other service of process procedure.

9. **Responsibility for Litigation Costs, Expenses and Payment of Attorney's Fees.** Article II, Section 29 of the Tennessee Constitution prohibits governmental entities from lending their credit to private entities and, therefore, prohibits an agreement by Customer to indemnify a third party or agree to a limitation of liability provision. This prohibition extends to contractual

provisions for the payment of attorney's fees. In the event of litigation between Customer and Contractor each party shall be solely and exclusively responsible for the payment of litigation costs, expenses and attorney's fees excepting those costs which may be awarded by a court of competent jurisdiction as specified by Tennessee law or applicable rules of civil procedure.

10. **Non-appropriation.** Contractor acknowledges that Customer is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event Customer fails to appropriate funds or make monies available for any fiscal year covered by the term of this Agreement for the services to be provided, this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to District, such termination shall not be a breach of this Agreement, and any unused payment made to Contractor shall be returned to District.

11. **No Taxes.** As a tax-exempt entity, Customer shall not be responsible for sales or use taxes incurred for products or services. Customer shall supply Contractor with its Sales and Use Tax Exemption Certificate upon Contractor's request.

12. **Warranty.** Contractor warrants that the products purchased herein when used in accordance with the documentation shall operate in all material respects in conformity with the written representations of Contractor. If it does not perform as warranted, Contractor shall use commercially reasonable efforts to correct the products so that it operates in all material respects in conformity with the written representations of Contractor. If it cannot correct the products within a reasonable period of time, Contractor shall refund the purchase price of the products.

13. **No Unilateral Modification.** Contractor shall not modify the Agreement, Terms of Use, Privacy Policy, or any incorporated online terms in a manner that materially affects District's rights, obligations, data privacy, data security, payment obligations, or legal remedies unless such modification is agreed to in writing by District's authorized representative. Continued use of the Services shall not constitute District's acceptance of any such modification.

14. **No Automatic Renewal.** Notwithstanding any provision to the contrary in the Agreement, the Agreement shall not automatically renew. Any renewal, extension, add-on service, additional license, or continuation of Services beyond the stated license period must be approved in advance through a written agreement, purchase order, or other written authorization issued by District's authorized representative. Continued use of the Services, account access, data retention, or failure to disable an account shall not constitute renewal or acceptance of additional payment obligations.

15. **Compliance with Tenn. Code Ann. §49-1-221(c)(1)(A-D).** Pursuant to the requirements of Tenn. Code Ann. § 49-1-221(c), Contractor shall:

- a. Verify that the digital or online materials do not violate Tenn. Code Ann. § 39-17-902;
- b. Filter, block, or otherwise prevent access to pornography or obscenity through one's use of the digital or online materials;
- c. Verify, in writing, that the Contractor's technology prevents a user from sending, receiving, viewing, or downloading materials that are harmful to minors, as defined in Tenn. Code Ann. § 39-17-901; and
- d. Remove, within one (1) business day, upon the Customer's request, access to digital or

online materials for ages or audiences for which the Customer or state agency has determined the material to be age- or audience-inappropriate unless the deadline for removal is extended upon mutual agreement of the parties.

16. **Dispute Resolution.** The Parties acknowledge and agree that no mandatory negotiation, mediation, or waiting periods shall be required prior to the initiation of litigation. Either Party may file suit at any time in a court of competent jurisdiction, consistent with Section 8. Any voluntary dispute-resolution efforts undertaken by the Parties shall not delay either Party's ability to pursue legal or equitable relief. The Parties further agree that any dispute-resolution procedures shall apply equally to both Parties, and no Party shall have a unilateral right to bypass any agreed procedure. Any mediation or settlement discussions shall occur at a mutually agreeable time, place, and format, including remote mediation. Each Party shall bear its own costs.

17. **Amendment.** This Addendum and the Agreement shall not be modified or altered other than by written agreement executed by both parties.

18. **Survival.** This Addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference.

19. **No Presumption Against Drafter.** This Addendum shall not be construed for or against any party because that party or that party's legal representative drafted any of its provisions. Accordingly, this Addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Addendum differs in any respect from any previous draft hereof.

20. **Counterparts.** This Addendum may be executed in one or more counterparts by Customer and Contractor. If so executed, the signer shall deliver an original to the other party and the collective counterparts shall be treated as the fully executed document.

21. **Effective Date.** This Addendum shall be effective immediately after the Agreement is effective.

ZEARN

MURFREESBORO CITY SCHOOLS

Signature

Bobby N. Duke, III, Director of Schools

Date

Date

Printed Name

Title

Approved as to form:

Lauren Bush, Assistant City Attorney