

**Purchasing Department**

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**Sample FERPA Privacy Clause**

The Family and Educational Rights and Privacy Act (FERPA) provides specific protections for student education records maintained by institutions of higher education. The University’s FERPA policy seeks to maintain the University’s compliance with FERPA. In situations where confidential student data is hosted or accessed by a vendor, the contract with the vendor must acknowledge and address FERPA protections and obligations.

The following is a sample FERPA clause you might consider using for third party vendors/service providers under contracts with ULM in which student records are or may be hosted, accessed, and/or maintained by the contractor/vendor in connection with the contract. The language can be inserted as an additional clause or section in the body of the contract, or attached as a separate addendum to the contract. If the latter, the addendum should provide a signature block for execution by both parties.

SAMPLE CLAUSE:

The [Vendor] acknowledges that certain information about the University’s students is contained in records hosted, accessed, and/or maintained by the [Vendor] in connection with this Agreement and that this information can be confidential by reason of the Family and Educational Rights and Privacy Act of 1974 (20 U.S. C. 1232g) and related University policies currently at [https://www.ulm.edu/registrar/ferpa.html] unless valid consent is obtained from the University’s students or their legal guardians. Both parties agree to protect these records in accordance with FERPA and University policy. To the extent permitted by law, nothing contained herein shall be construed as precluding either party from releasing such information to the other so that each can perform its respective responsibilities. The University shall advise [Vendor] whenever any University students have provided consent to release information to an extent broader than as provided for by FERPA or University policy.

[Vendor] agrees that it may create, receive from or on behalf of University, or have access to, records or record systems that are subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. Section 1232g (collectively, the "FERPA Records"). [Vendor] represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which [Vendor] protects its own confidential information; and (3) continually monitor its operations and take any action necessary to assure that the FERPA Records are safeguarded in accordance with the terms of this Agreement. These measures will be extended by contract to all subcontractors used by [VENDOR]. At the request of University, [Vendor] agrees to provide University with a written summary of the procedures [Vendor] uses to safeguard the FERPA Records.

[Vendor] shall, within one day of discovery, report to University any use or disclosure of FERPA Records not authorized by this Agreement or in writing by University. [Vendor’s] report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the FERPA Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what [Vendor] has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action [Vendor] has taken or shall take to prevent future similar unauthorized use or disclosure. [Vendor] shall provide such other information, including a written report, as reasonably requested by University.

[Vendor] shall indemnify, defend and hold 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 [Vendor’s] failure to meet or breach any of its obligations under this Agreement.

Upon termination, cancellation, expiration or other conclusion of the Agreement, [Vendor] shall return all FERPA Records to University within thirty (30) days or, if return is not feasible, destroy any and all FERPA Records. Twenty (20) days before destruction of any FERPA Records, [Vendor] will provide University with written notice of [Vendor’s] intent to destroy FERPA Records. Within seven (7) days after destruction, [Vendor] will confirm to University in writing the destruction of FERPA Records.

To the extent that the terms and conditions under this Section [or Addendum] conflict with [Vendor’s] privacy policy or Terms of Use, this Section [or Addendum] shall govern the privacy and confidentiality of FERPA Records. The restrictions and obligations under this Section [or Addendum] will survive expiration or termination of this Agreement for any reason.