

ADDENDUM #1 TO COPPER MEMBERSHIP AGREEMENT WITH COCHISE COUNTY FREE LIBRARY DISTRICT

Addendum #1 to Copper Membership Agreement (hereinafter referred to as “ADDENDUM #1”) is made and entered into by and between the Consortium of Partners Procuring Electronic Resources, an Arizona non-profit corporation and public procurement unit established pursuant to A.R.S. §§ 11-952; 11-952.01; and 41-2632 (hereinafter “COPPER”), and the Cochise County Library District, a special taxing subdivision of the State of Arizona (hereinafter referred to as “MEMBER”). COPPER and MEMBER may each be referred individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Parties have entered into the Consortium of Partners Procuring Electronic Resources Membership Agreement (hereinafter “COPPER Membership Agreement”) for procurement of electronic library resources on this same date herewith; and,

WHEREAS, the Parties wish to amend Paragraph 1 subsection b of the COPPER Membership Agreement and add Paragraph 13 with subsections a through q to the COPPER Membership Agreement for their mutual benefit for procuring electronic resources and to conform with Arizona law; and,

WHEREAS, this ADDENDUM #1 is hereby made a part of, and incorporated into the COPPER Membership Agreement, as though fully set forth therein; and,

WHEREAS, it is the intent of the Parties by executing this ADDENDUM #1 that the COPPER Membership Agreement is modified or supplemented by the terms set forth in this ADDENDUM #1, and that it conforms to the terms and conditions of the COPPER Membership Agreement and to the requirements of all applicable federal, state and local laws, rules and regulations relating to governmental entities and public finance.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, COPPER and MEMBER, intending to become legally bound, agree as follows:

Paragraph 1 subsection b of the COPPER Membership Agreement is hereby amended in its entirety as follows:

1. COPPER shall:
 - b. Conduct the procurement in compliance with the Arizona State Procurement Code and the Arizona State Board of Education School District Procurement Rules (A.R.S. Title 41, Chapter 23, and A.A.C. R7-2-1001 *et seq.*) and all local, State, and Federal laws or rules. COPPER will seek contracts for a variety of materials, services, equipment, and/or construction to enable MEMBER to be/remain in compliance with its own procurement rules, policies, and procedures while promoting the overall efficiency, effectiveness, and economy

of public procurement.

Paragraph 13 with subsections a through r of the COPPER Membership Agreement is hereby added as follows:

13. The Parties hereby also agree to the following terms and conditions:

a. **Term**

- i. The initial term of the COPPER Membership Agreement shall commence on July 1, 2022, and shall continue through June 30, 2024. Thereafter, the COPPER Membership Agreement shall automatically renew for supplemental one-year terms of up to a maximum of two (2) one-year terms.

b. **Insurance.**

- i. The Parties shall maintain appropriate insurance.
- ii. Certificates of Insurance shall be provided to a Party upon request.

c. **Indemnification.**

- i. To the fullest extent permitted by law, COPPER (as “Indemnitor”) hereby agrees to defend, indemnify, and hold harmless MEMBER and its departments, agencies, officers, officials, agents, employees, and volunteers (hereinafter referred to as “Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including, but not limited to, court costs, attorneys’ fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as “Claims”) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused as a direct or indirect result of any acts or omissions of COPPER or any of its owners, officers, directors, agents, employees, or subcontractors, regardless of whether or not such Claims are caused in part by a Party indemnified hereunder. This indemnity includes, but is not limited to, any claim or amount arising out of, or recovered under, the Workers’ Compensation Law or arising out of the failure of COPPER to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is agreed that COPPER will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. COPPER shall not be obligated to defend Indemnitee against any Claims or indemnify Indemnitee resulting solely from the negligence or willful misconduct of Indemnitee and not in any way resulting from any act or omission of COPPER or anyone directly or indirectly employed by COPPER or anyone for whose acts COPPER may be liable. COPPER agrees to waive all rights of subrogation against MEMBER, its departments, agencies, officers, officials, agents, employees, and volunteers for losses arising from the work performed by COPPER for MEMBER. This indemnification shall survive the termination of the Agreement and this ADDENDUM #1.
- ii. Any insurance, its limits, amount and type required herein to be maintained by COPPER shall in no way be construed as limiting the scope of this Indemnity.

- d. **Confidentiality; Privacy of Records.** As a result of the operation of this Agreement, the Parties may have access to and may become acquainted with certain confidential information covered under A.R.S. § 41-151.22 and/or Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. §1232g; 34 CFR part 99. During and after the term of this Agreement, except as required by law, the Parties shall not divulge any confidential information to any other person or entity or use the confidential information for a Party’s own benefit or for the benefit of any other person or entity, without the prior written

consent of all Parties, which consent may be withheld in a Party's sole discretion. In the event that a Party receives notice of any person, agency's or entity's request or demand for confidential information, including, but not limited to subpoenas, search warrants, deposition notices, etc., the Party or Parties agree to immediately notify the other Parties and cooperate with all Party's efforts, consistent with law, to narrow the scope of or quash such request or demand.

- e. **Compliance with Law.** The Parties shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities in performing this Agreement, including environmental laws.
- f. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment, or fiduciary relationship between the Parties. The Parties' employees shall not be considered employees of the other Party, and neither Party's personnel will, by virtue of this Agreement, be entitled nor eligible, by reason of this Agreement, to participate in any benefits or privileges given or extended by the other Party to its employees. Neither Party shall be liable for any debts, accounts, obligations nor be responsible for other liabilities whatsoever of the other, including (without limitation) the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees
- g. **Notice.**
 - i. All notices required or permitted to be given under the terms of this Agreement shall be in writing, and shall be effective upon hand delivery, deposit with a reputable overnight courier such as FedEx for overnight delivery or three (3) business days after deposit with the U.S. Mail via certified or registered mail, postage prepaid, return receipt requested as follows:

If to COPPER to:

Consortium of Partners Procuring Electronic Resources

Jefferson St.,

Phoenix, Arizona 85009

With a courtesy copy via e-mail to: electronicresourcesconsortium@gmail.com

If to MEMBER to:

Cochise County Library District

Attn: Amadee Ricketts Director

1971 Commerce Center Circle, Suite D

Bisbee, AZ 85603

With a courtesy copy via e-mail: aricketts@cochise.az.gov

- ii. The Parties shall have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other Parties.
- h. **Implied Contract Terms.** Each provision of law and any terms required by law to be in this Agreement are a part of this Agreement as if fully stated herein.
- i. **Fair Meaning.** This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.
- j. **Legal Arizona Workers Act Compliance.** The Parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to their employment of their employees and with the requirements of A.R.S. §§ 23-214 and 41-4401 (together the "State and Federal Immigration Laws"). A breach of the foregoing warranty shall be deemed a material breach, and the Parties shall have

the right to terminate this Agreement for such a breach, in addition to any other applicable remedies. The Parties retain the legal right to inspect the papers of each contractor or subcontractor employee who performs work pursuant to this Agreement to verify performance of the foregoing warranty of compliance with the State and Federal Immigration Laws.

- k. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced, in accordance with the laws of the State of Arizona. Any action or claim arising from, under, or pursuant to this Agreement shall be brought in the courts, state or federal, within the State of Arizona, and the Parties expressly waive the right to bring any legal action or claim in any other court. The Parties hereby consent to venue in Cochise County for all purposes in connection with any action or proceeding commenced between the Parties hereto in connection with or arising from this Agreement. Any changes in the governing laws, rules, and regulations that do not materially affect COPPER's obligations under this Agreement during the Term of this Agreement will apply but will not require an Amendment.
- l. **Material Change in Law or Regulation.** In the event of adoption of legislation, regulations, or instructions or the initiation of an enforcement action by a governmental agency, any of which materially affects the legality of this Agreement or the relationship among the Parties hereto, either Party may propose amendments to this Agreement to bring this Agreement into conformity with such laws. If COPPER and MEMBER are unable to reach agreement on the renegotiation of this Agreement within thirty (30) days of the initiation of negotiations, then either Party may terminate this Agreement upon written notice to the other Party.
- m. **Severability/Unenforceable Provisions.** In the event that any of the provisions of this Agreement are held to be unenforceable or invalid, the validity and enforceability of the remaining provisions shall not be affected and effect shall be given to the intent manifested by the provisions held enforceable and valid. If any of the provisions of this Agreement are inapplicable to a person or circumstance, the same provisions shall remain applicable to all other persons and circumstances.
- n. **Waiver of Jury Trial.** The Parties hereby waive their respective rights to trial by jury in any action or proceeding arising out of this Agreement.
- o. **Written Certification Pursuant to A.R.S. § 35-393.01.** If COPPER engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000 or more, COPPER certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
- p. **Authority to Contract.** COPPER warrants its right and power to enter into this Agreement. If any court or administrative agency determines that the COPPER does not have authority to enter into this Agreement, MEMBER will not be liable to COPPER or any third party by reason of such determination or by reason of this Agreement.
- q. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto. Each Party may sign any number of copies of this Agreement. Each signed copy shall be deemed to be an original, but all of them together shall represent one and the same agreement.

- r. **Forced Labor of Ethnic Uyghurs in the People’s Republic of China.** COPPER certifies that it does not currently and agrees for the duration of the contract that it will not use the forced labor of Ethnic Uyghurs in the People’s Republic of China. COPPER will not use any goods or services produced by the forced labor of Ethnic Uyghurs in the People’s Republic of China. COPPER will not use any subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of Ethnic Uyghurs in the People’s Republic of China.
- s. **Legal Agreement.** This Agreement is an important, binding legal document, and each Party warrants it has had an opportunity to consult with an attorney about the terms set forth herein. Each Party acknowledges that it understands the meaning of all terms contained herein and agrees to their application and enforceability. Each Party acknowledges and represents that it is duly organized, validly existing, and in good standing, and has the right, power, and authority to enter into this Agreement and bind itself hereto through the person set forth as signatory for the Party below. The person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute this Agreement.

Except as specifically provided in this ADDENDUM #1, all other conditions and terms and provisions of the COPPER Membership Agreement shall remain unchanged and shall remain in full force and effect. In the event of a conflict between any provision of this ADDENDUM #1 and any provision of the COPPER Membership Agreement, the provisions of this ADDENDUM #1 shall control. If any term or condition of this ADDENDUM #1 is unenforceable or unlawful, then such provision shall be deemed null and void without invalidating the remaining provisions of this ADDENDUM #1 or the COPPER Membership Agreement.

APPROVALS

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officials and have affixed their signatures to this Agreement on the date written below.

COPPER: Consortium of Partners Procuring Electronic Resources, an Arizona non-profit corporation and public procurement unit established pursuant to A.R.S. §§ 11-952; 11-952.01; and 41-2632

Signature _____
Date

Printed Name and Title

MEMBER: Cochise County Library District, a special taxing political subdivision of the State of Arizona

Craig L. Brown _____
Chairman, Board of Directors Date