RESOLUTION NO. 1-04-10-2023

WHEREAS, Athens State University ("Athens State") and Archer Education, Inc. ("Archer") were parties to a *Master Services Agreement* (the "MSA") whereby Archer performed various services for Athens State;

WHEREAS, Interim President Catherine Wehlburg, with this committee's support, terminated the MSA on March 27, 2023;

WHEREAS, this committee encouraged Dr. Wehlburg to work in good faith with Archer to resolve any resulting transitional issues;

WHEREAS, there have been some differences between Archer and the University concerning the termination and its impact;

WHEREAS, after extensive discussions, Dr. Wehlburg and Archer have reached an agreement to fully resolve any remaining issues between the University and Archer;

WHEREAS, generally speaking, such agreement would resolve the dispute by extending certain payments to Archer through the Fall, 2023 semester (but not beyond) for services that Archer rendered prior to March 27, 2023 in connection with students enrolled at the University through the Fall, 2023 semester; and

WHEREAS, the executive committee finds that this agreement is fair, equitable, and consistent with the best interest of the University.

NOW, THEREFORE, BE IT RESOLVED by the Executive Committee of the Athens State University Board of Trustees on this the 10th day of April, 2023, that the Executive Committee ratifies and approves the agreement negotiated by Interim President Catherine Wehlburg, between the University and Archer, resolving the all remaining issues between the University and Archer.

ADOPTED by the Executive Committee of the Athens State University Board of Trustees on this the 10th day of April, 2023.

Arthur Orr
Chair *Pro Tempore*, Athens State University Board of Trustees
Chairman of the Executive Committee of the Athens State University Board of Trustees

Attested by:
Jackie Gooch
Secretary, Board of Trustees and Executive Committee

2023 AGREEMENT TO CONCLUDE THE MASTER SERVICES AGREEMENT

WHEREAS, ARCHER EDUCATION, INC. ("Archer") and ATHENS STATE UNIVERSITY (the "University") were parties to a *Master Services Agreement* by and between Archer and the University, dated February 3, 2021, and all of its amendments and attachments, including that certain *First Amendment to Addendum B of the Master Agreement*, by and between Archer and the University, and fully executed by those parties on April 12, 2022 (all of these are collectively referred to herein as the "MSA");

WHEREAS, on March 27, 2023, the University notified Archer that the University had elected to terminate the MSA pursuant to Section 10.2 of the MSA;

WHEREAS, there has been some disagreement between the University and Archer concerning certain provisions of the MSA, and the University and Archer have fairly resolved their differences and wish to memorialize their agreement with respect to such matters as stated herein.

NOW, THEREFORE, in exchange for the mutual promises contained herein, and for other valuable consideration, the University and Archer do hereby enter into this *2023 Agreement to Conclude the Master Services Agreement* (the "Agreement"), and agree as follows. Archer and the University are sometimes referred to collectively herein as the "Parties", and both are sometimes referred to individually as a "Party":

1. **Definitions**. Unless as otherwise specified herein, the capitalized terms in this Agreement shall have the same meanings as they do in the MSA.

2. **Termination of MSA**. The MSA shall be deemed as having been terminated, effective March 27, 2023, and Archer and the University shall have no other duties or obligations to one another whatsoever arising from or relating to the MSA, unless as otherwise expressly set forth in this Agreement.

3. **Revenue Share**. Section 2.5 of the MSA provided for the University's payment of certain fees to Archer, with respect to certain tuition dollars associated with the Listed Programs. In recognition of the Services that have already been provided to the University by Archer, as well as of the consideration stated herein, the University shall pay Archer fees, as are set forth, limited, and described in Section 2.5 of the MSA, but only with respect to tuition dollars received (and not refunded to the student) by the University for the Listed Programs that are attributable to the University's Spring, 2023 semester; Summer, 2023 semester; and Fall, 2023 semester, except that such fees, to the extent that such fees would be owed under Section 2.5 with respect to students enrolled in those semesters, shall only be owed in connection with: (a) students that were previously enrolled in the Listed Programs at any point during the University's Fall, 2021; Spring, 2022; Summer, 2022; Fall, 2022; and/or Spring, 2023 semesters; and (b) students for which the University had received, as of March 27, 2023, completed applications for enrollment in the Listed Programs for either the University's Summer, 2023 or Fall, 2023 semesters. With respect to the University's Summer, 2023 and Fall, 2023 semesters, the University shall provide Archer with

lists of enrolled students in the Listed Programs and the credit hours for each such student in the Listed Programs, in the same manner as such lists are provided for by Section 2.5.

4. **Surviving Provisions of MSA.** The following sections of the MSA shall continue to apply to Archer and the University following the termination of the MSA, and no others: (a) Section 3.3 (Non-Infringement); (b) Section 4.1 (Confidential Information, FERPA, and Data Privacy); (c) Section 4.2 (Destruction of Confidential Information); (d) Section 7 (Payment Disputes); (e) Section 9 (No Indirect Damages); (f) Section 11.6 (Governing Law); and (g) Section 11.7 (DOE). By way of example and not limitation, Section 2.6 of the MSA does not apply to the Parties.

5. **Student Transition.** For a period of thirty (30) days following the execution of this Agreement, Archer and the University shall work together in good faith to take any and all actions that are reasonably necessary to share information and transition services from Archer to the University in order to minimize any disruptions to the University students' educational experiences resulting from the termination of the MSA, to the extent that the same does not impose a significant expense upon Archer in Archer's sole determination.

6. **Mutual Release.**

(a) ***Release by Archer.*** In exchange for good and valuable consideration, the receipt of which is hereby acknowledged, Archer (on behalf of itself and its present and former affiliates, successors, predecessors, and assigns) does hereby fully, finally, irrevocably and unconditionally release, acquit and forever discharge the University (and any and all of its current or former officers, employees, agents, trustees, and representatives) from any existing or potential causes of action, claims, counterclaims, claims for relief, actions, derivative claims, suits, debts, liens, judgments, sums of money, contracts, obligations, agreements, promises, liabilities, demands, losses, compensation, costs, fees, expenses, injuries, damages, punitive damages, indemnification, subrogation, and attorneys' fees, of any kind, character, or nature whatsoever, known or unknown, foreseen or unforeseen, fixed or contingent, joint or several, created in law or by statute or in equity, arising from or relating to the MSA and/or the Services provided to the University by Archer during the term of the MSA, which Archer may have had, may now have or claim to have, or may have in the future. However, the foregoing release specifically excludes any action for the enforcement of the terms of this Agreement.

(b) ***Release by the University.*** In exchange for good and valuable consideration, the receipt of which is hereby acknowledged, the University (on behalf of itself and its present and former affiliates, successors, predecessors, and assigns) does hereby fully, finally, irrevocably and unconditionally release, acquit and forever discharge Archer (and any and all of its current or former stockholders, directors, officers, employees, agents, and representatives) from any existing or potential causes of action, claims, counterclaims, claims for relief, actions, derivative claims, suits, debts, liens, judgments, sums of money, contracts, obligations, agreements, promises, liabilities, demands, losses, compensation, costs, fees, expenses, injuries, damages, punitive damages, indemnification, subrogation, and attorneys' fees, of any kind, character, or nature whatsoever, known or unknown, foreseen or unforeseen, fixed or contingent, joint or several, created in law or by statute or in equity, arising from or relating to the MSA and/or the Services provided to the University by Archer during the term of the MSA, which the

University may have had, may now have or claim to have, or may have in the future. However, the foregoing release specifically excludes any action for the enforcement of the terms of this Agreement.

7. **Covenant Not to Sue.** Each Party further agrees, promises and covenants that neither it, nor any person, organization or any other entity acting on its behalf will file, charge, claim, sue or cause or permit to be filed, charged or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief or other) before any group or tribunal (including administrative, judicial, legislative, board or otherwise) against the other Party (and any and all of its current or former stockholders, directors, officers, employees, agents, trustees, and representatives, as applicable), arising from or relating to the MSA and/or the Services provided to the University by Archer during the term of the MSA, excluding any action for the enforcement of the terms of this Agreement.

8. **Miscellaneous.**

(a) ***No Other Monetary Compensation.*** The Parties acknowledge that, except for Section 3 of this Agreement concerning certain fees to Archer, nothing contained in this Agreement creates, mandates or constitutes any obligation of the University to compensate, pay or otherwise provide any monetary payment of any kind to Archer. Moreover, nothing in this Agreement creates any basis for any third party to seek any financial recovery or monetary benefit of any kind from either Party to this Agreement. Except as permitted under the fee-shifting provision set forth below, each Party to this Agreement shall bear their own respective attorneys' fees and expenses with respect to this Agreement.

(b) ***Authority to Enter Into Agreement and Public Purpose Declared.*** The Parties hereby affirm and acknowledge that each of them have the legal authority to enter into this Agreement. The University finds and affirms that the Agreement serves a valid public purpose and that the Agreement is necessary and appropriate for the proper management of the University.

(c) ***No Admission.*** This Agreement is not and shall not in any way be construed as an admission by any Party of liability or wrongdoing of any kind, but constitutes the good faith settlement of disputed claims. The Parties have entered into this Agreement, in part, for the purpose of resolving the aforementioned claims to avoid the burden, expense, delay and uncertainties of litigation.

(d) ***Binding Effect and Non-Assignment.*** This Agreement shall be binding upon and benefit the successors and assigns of each Party hereto. Each party executing this Agreement represents and warrants that it is duly authorized to execute the same. No party hereto shall assign, hypothecate, delegate or otherwise transfer or encumber all or any part of its rights, duties or other interests in this Agreement without prior written consent of all the Parties to this Agreement.

(e) ***Effective Date of Agreement.*** This Agreement shall become effective and binding upon the Parties upon (i) its execution by the Parties, and (ii) its approval by the Executive Committee of the Athens State University Board of Trustees.

(f) ***Severability***. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, the Parties shall make their best efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

(g) ***Breach***. This Agreement has been drafted jointly by the Parties and shall be executed in good faith by the same. If any Party fails to comply with any of the obligations or covenants under this Agreement, the non-breaching Party shall be entitled to recover, in addition to whatever other relief is available under this Agreement or applicable law, all costs and expenses incurred in compelling the performance of such obligations or covenants, including attorneys' fees.

(h) ***Entire Agreement***. This Agreement contains the entire understanding and agreement of the Parties with respect to the matters identified above. All Parties acknowledge that there are no other representations and no other obligations that relate to the matters identified above.

(i) ***Counsel***. The Parties acknowledge that each of them have been represented by legal counsel in this matter, and that each has had the opportunity to contribute to the drafting of this Agreement, and, as a consequence, that the Agreement should not be construed for or against either of the Parties.

(j) ***Headings***. The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

(k) ***Counterparts***. This Agreement may be executed in counterparts and all such counterparts when so executed shall together constitute the final agreement as if one document had been signed by all of the Parties.

[Signature pages follow]

IN WITNESS WHEREOF, Archer and the University have duly executed this Agreement, as shown below.

ARCHER EDUCATION, INC.

By: _____

Print Name: Brian Hartnack

Its: CEO

Date: 4/6/23

STATE OF Arizona)
Mohave COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Brian Hartnack whose name as CEO of Archer Education, Inc., is signed to the foregoing *2023 Agreement to Conclude the Master Services Agreement* and who is known to me, acknowledged before me on this day that, being informed of the contents of the same, he/she, in his/her capacity as such authorized agent and with full authority, executed the same voluntarily for and as the act of said entity on the day the same bears date.

Given under my hand this the 6th day of April, 2023.

{SEAL}

Notary Public

My Commission Expires: April 15, 2023

HEATHER RAE CRAWFORD
Notary Public - Arizona
Mohave County
Commission # 560444
My Comm. Expires Apr 15, 2023

[Remainder of Page Intentionally Left Blank – University's Signature Page to Follow]

ATHENS STATE UNIVERSITY

By: _____
Catherine Wehlburg
Its Interim President

Date: 4-6-23

STATE OF Alabama)
Limestone COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Catherine Wehlburg, whose name as Interim President of Athens State University, is signed to the foregoing *2023 Agreement to Conclude the Master Services Agreement* and who is known to me, acknowledged before me on this day that, being informed of the contents of the same, she, in her capacity as such authorized agent and with full authority, executed the same voluntarily for and as the act of said entity on the day the same bears date.

Given under my hand this the 6th day of April, 2023.

Jackie Gooch
Notary Public

{SEAL}

My Commission Expires: 06/23/2026