



## **Institutional Annual Enterprise License Agreement (iClicker Academic Suite only)**

**Date:** May 27, 2020

**Parties:**

- iClicker, a New York limited liability company ("iClicker")
- University of North Texas ("Institution")

**License Term:**

- Three (3) License Years, starting on June 10, 2020 and ending on June 9, 2023. Activation will be confirmed with an email notification sent to the primary contact at the Institution. Typical turnaround time for activation is two business days after the request is submitted.
- Each License Year commences on June 10th of the applicable year and ends the following June 9th.

**Licensed Product:** iClicker Reef Student application and associated Instructor applications.

**License Grant:**

(a) iClicker represents, warrants and covenants that it has all necessary rights to the Licensed Product to enable the Institution and Authorized Users to use the Licensed Product and related services (the "Services") in accordance with the terms of this Agreement and has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants under this Agreement. iClicker grants the Institution the right to authorize Authorized Users to access and use the Licensed Product for the License Term in accordance with the terms of this Agreement.

(b) The Institution represents, warrants and covenants that it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants under this Agreement. The Institution understands and agrees that iClicker will process information (including personal information) in connection with the use of the Services by the Institution and its Authorized Users. Accordingly, the Institution hereby grants iClicker a license to: i) use such data as reasonably required to provide the Services; and ii) de-identify such data and analyze it to improve its educational products and services, including to create aggregated or statistical insights and baseline reports that are not identifiable to individuals or institutions for use in other Macmillan Learning educational products and services.

**Authorized Users:** Any administrator, instructor or student enrolled at or employed by the Institution.

**Minimum Number of Licenses:** Up to 35,000 student user licenses.

**Monitoring Usage:** Administrators can access and analyze engagement data at any time through the use of the iClicker usage dashboard.

**Pricing and Payment:**

- **Payment:** The Institution will be invoiced on June 10th of First License Year in the initial amount of \$42,000; then invoiced on June 10th of Second License Year in the amount of \$50,000; and then invoiced on June 10th of Third License Year in the amount of \$52,000. iClicker will assess within 30 days after the Drop Period in the starting Semester, the total number of Student Users in the starting Semester and the total number of Student Users in the Ending Semester to determine the Highest Number of Student Users. All invoices are payable NET 30 days. Any late payment shall be subject to a late fee accruing at the rate of 1.5% of the outstanding amount per month, or the maximum amount permitted by law, whichever is lower. At iClicker's discretion, a termination of the license may result from any payment that is overdue by more than 30 days.

#### **Early Termination:**

- The Institution may terminate this Agreement by providing written notice at least 60 days prior to the end of the applicable License Year. Upon such termination, the Institution will be invoiced for any amounts owed with respect to the applicable License Year if usage is in excess of the Minimum Number of Licenses.

#### **Gratis Licenses:**

- The Institution will receive a number of free licenses for use by teaching assistants and similar staff. The number of free licenses given in any License Year shall equal 5% of the number of Licenses used in the prior License Year.

#### **Service, Training and Support:**

- **Annual Meetings:** iClicker will schedule an in-person meeting once each year with the Institution to discuss any issues and concerns and can host additional phone meetings as needed by the Institution.
- **Customer Service Response Time:** The designated iClicker Student Engagement Specialist will provide the Institution with expeditious customer service, that shall include:
  - Email and phone calls will generally be returned within one business day for standard questions and 2 business days for questions requiring additional research.
  - Regular communication regarding software updates and new features.
  - Surveys and other ways to solicit the Institution's feedback regarding the system and software.
- **Training:** iClicker will work with the Institution to offer a private web-based training session in addition to our standard, public training sessions. The iClicker Student Engagement Specialist will also schedule and provide on-campus training sessions, to be scheduled at a mutually agreeable time with the Institution.
- **Pedagogical Training:** iClicker will provide the Institution with gratis pedagogical support via public webinars (twice per year) with an iClicker Faculty Advocate. iClicker will also provide one gratis, on-site pedagogical training during the initial product launch.
- **Uptime Guarantee:** iClicker will commit to an uptime percentage of 99.5% for the Licensed Product, excluding scheduled maintenance and downtime due to factors beyond the reasonable control of iClicker.
- **Technical Support:** iClicker will provide ongoing training and technical support (including support for students) through our iClicker Support Community which includes phone, email, and a self-service knowledge base. Our self-service Knowledge Base includes articles, frequently asked questions, video tutorials, training schedules/registration and support documentation and is available to students, faculty and administrators at all times. All support options are accessible via our support portal at <http://iclicker.com/support>. iClicker live technical support is available for instructors and students from 9:00am to 11:00pm Monday through Thursday (Eastern Time) and 9:00am to 9:00pm on Fridays (Eastern Time).

#### **Terms of Use and Privacy Policy:**

- The Terms of Use and Privacy Policy found at <https://store.macmillanlearning.com/us/termsOfUse> and <https://store.macmillanlearning.com/us/privacy-notice> shall apply to the use of iClicker by its end-users (i.e., students, instructors, administrators).

**Confidentiality:**

- The terms of this Agreement including without limitation the pricing terms are considered to be the confidential information of iClicker. To the extent permitted under applicable law, the Institution agrees not to disclose such information to any third party.

**FERPA:**

- The FERPA and State Certification Addendum attached hereto as Exhibit B is incorporated herein and made a part hereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the date specified at the beginning of this Agreement.

**University of North Texas**

**iClicker**

**By:**

**Name**

**Title**

**Address:** 1155 Union Circle #310500  
Denton, TX 76203-5017

**Address:** 1 New York Plaza, Suite  
4600, New York, NY 10004

**Date:**

**Date:**

## EXHIBIT A

PRICING GRID: United States Pricing (in U.S. Dollars)

**Academic Suite Site License** (includes Basic Student Engagement Suite for those wanting a student engagement solution only)

# of Student Users	ANNUAL FEE FOR 1st Year Term	ANNUAL FEE FOR 2nd Year Term	ANNUAL FEE FOR 3rd Year Term
Up to 35,000	\$42,000	\$50,000	\$52,000

## EXHIBIT B

### FERPA and State Certification Addendum

This Schedule forms part of the Annual Enterprise Site License Agreement and Terms of Service between iClicker and the Institution (the "Agreement") respecting the delivery of Services identified in the Agreement.

#### 1) Definitions:

- **FERPA** means The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Section 1232g and 34 CFR Part 99).
- **Education Records** are defined in the same manner as the term is defined by FERPA.
- **Personally Identifiable Information (PII)** is defined in the same manner as the term is defined in FERPA.

#### 2) Performance Of An Institutional Service Or Function

Under this Agreement, iClicker is performing an institutional service for which the Institution would otherwise use Institution employees as required under 34 CFR § 99.31 (a)(1)(i)(B)(1).

#### 3) Controlled By The Institution

iClicker is under the direct control of the Institution with respect to the use and maintenance of Education Records to perform its services and provide its products under this Agreement as required by 34 CFR § 99.31 (a)(1)(i)(B)(1).

#### 4) Re-disclosure and Use

iClicker is subject to and shall comply with the requirements of 34 CFR §99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records received while performing its services under this Agreement.

#### 5) Security of Educational Records

iClicker shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of any Educational Records received while performing its services under this Agreement. iClicker shall protect such Educational Records according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

#### 6) Reporting of Unauthorized Disclosures or Misuse of Educational Records

iClicker shall (to the extent legally permissible) report to Institution any unauthorized use or disclosure of Educational Records that iClicker becomes aware of while performing its services under the Agreement. . iClicker's report shall identify to the extent possible:

- a. The nature of the unauthorized use or disclosure;
- b. The Educational Record used or disclosed;
- c. Who made the unauthorized use or received the unauthorized disclosure;
- d. What iClicker has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
- e. What corrective action iClicker has taken or shall take to mitigate future unauthorized use or disclosure of Educational Records.

#### 7) Data Retention

After receipt of written request thereof from the Institution, iClicker shall destroy all Personally Identifiable Information in the Education Records received under the Agreement.

#### 8) Certification

iClicker certifies that it is now and shall remain in compliance with all applicable U.S. state privacy law requirements for service providers, including (without limitation) the California Consumer Privacy Act (CCPA).



## STANDARD ADDENDUM TO AGREEMENT

Contracts with the University of North Texas System and the University of North Texas (collectively, "UNT") are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

**Payment.** In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNT; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

**Eligibility to Receive Payment.** By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov't Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**Tax Exempt.** UNT is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

**Breach of Contract Claims Against UNT.** Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNT that cannot be resolved in the ordinary course of business.

**Governing Law and Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part in Denton County, Texas, and venue for any suit filed against UNT shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

**No Excess Obligations.** In the event this Agreement spans multiple fiscal years, UNT's continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNT shall issue written notice to Vendor that UNT may terminate the Agreement without further duty or obligation.

**Travel Expenses.** Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

**Delivery.** Delivery shall be FOB Destination.

**Insurance.** UNT, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNT shall without further requirement, satisfy all insurance obligations of UNT under the Agreement.

**Public Information.** UNT shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNT in an electronic format. The requirements of Subject J, Chapter 552, Texas Government Code, may apply to this contract and Vendor agrees that the contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Further, Vendor agrees (1) to preserve contracting information for the duration of the contract and according to UNT records retention requirements; (2) to promptly provide contracting information to UNT when requested; and (3) upon completion of the contract to provide, at no cost, all contracting information to UNT or to preserve all contracting information according to UNT's records retention requirements.

Required Posting of Contracts on Website. Vendor acknowledges and agrees that UNT is required by Section 2261.253 of the Texas Gov't Code to post each contract it enters into for the purchase of goods or services from a private vendor on its Internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

Israel Non-Boycott Verification. If the Agreement is subject to Texas Gov't Code Section 2270.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

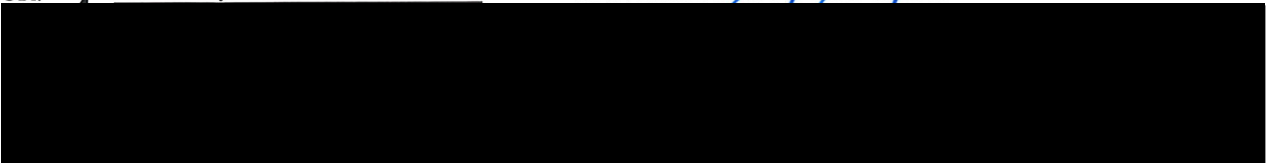
Limitations. UNT is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNT property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNT, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

VENDOR:

iclicker

UNIVERSITY OF NORTH TEXAS

By:  
Name:  
Title:  
Date:



## **Declaration of Procurement Method**

The attached contract document has been issued as a result of either a sole source or proprietary justification approved by the University of North Texas System Procurement Department.

The approved justification form is on file with the UNT System Procurement Department records.