



CONTRACT MODIFICATION

Date: May 07, 2024
Contract #: UCPJMU5726
Service: Atlantic Union Bank Center - LED Displays Package
Modification #: Four
Issued By: James Madison University Ph: 540-568-3137
Colleen Johnson,
Lead Commodity Contract Officer & Project Manager Fx: 540-568-7935
Contractor: DAKTRONICS, INC
Attn: Jennifer Cites, Senior Counsel
331 32ND AVE., PO BOX 5128
BROOKINGS, SD 57006
Contract Administrator: Kevin Warner, Athletics

Description of Modification Notice:

The attached Daktronics *Software License Agreement* and *Creative Services Terms and Conditions* documents are hereby incorporated into the contract.

Except as provided herein, all terms and conditions of Contract Number UCPJMU5726 remain unchanged and in full force and effect.

DAKTRONICS, INC

By: Jay Parker
Jay Parker (May 7, 2024 12:50 CDT)

Jay Parker

Name (print)

Vice President 05/07/24

Title Date Signed

James Madison University

By: Colleen Johnson
Colleen Johnson, CUPO

Name (print)

Lead Commodity Contract Officer & Project Manager 5/7/2024

Title Date Signed

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12. Support Services¹.
- a. If no longer period is stated in the Agreement, the price of the License (which may be included in the Purchase Price of the Agreement) includes one (1) year of Support Services, commencing on the Commencement Date (the "Initial Support Term.") This price is based on the total amount of authorizations granted for the Software. Licensee may terminate Support Services for the Software at any time by giving Daktronics written notice. Upon expiration of the Support Services, Licensee may extend Support Services upon payment of Daktronics' then-current fees.
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18. Arbitration. Intentionally blank.

¹ The Extended Service Agreement, available from Daktronics, provides for Support Services after expiration of the warranty period, and in some instances may be purchased in conjunction with this License for additional services. For further information, contact Daktronics Customer Service at 1-800-DAKTRONICS (1-800-325-8766). If Licensee has already purchased extended services from Daktronics, Licensee should refer to extended services documentation for details.

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Daktronics Creative Services Terms and Conditions

1. OBLIGATIONS OF THE PARTIES

- 1.1. Scope of the Work. The documents that apply to this Professional Creative Services Agreement (the "Agreement") are the contract UCPJMU5726 which shall govern in the event of conflict, the Daktronics quote or sales agreement (the "Order Document"), and these Terms of Professional Creative Services. The Order Document contains a detailed description of the services to be provided by Daktronics to purchaser ("Purchaser"), including any documents, work product, or other materials that are to be delivered hereunder ("Deliverables") (together, the "Work"), and any other terms and conditions agreed upon by the parties in connection with the Work.
- 1.2. Contract Documents. The parties agree that any subsequently issued Purchaser form (such as a purchase order) incorporates these Terms of Professional Creative Services as mutually agreed between parties and incorporated into UCPJMU5627. These Terms of Professional Creative Services will control in the event of any conflicting provision in Purchaser's form.
- 1.3. Term. The Term of the Agreement will begin ("the Effective Date") and end on the dates specified in the Order Document. If no term is stated, then the Effective Date is the date of the first signature date on the Order Document, and will continue thereafter until the completion of the Work, unless sooner terminated pursuant to the terms and conditions herein.
- 1.4. Professional Practices. Daktronics will perform the Work using personnel of required skill, experience, and qualifications and in a professional manner in accordance with generally recognized industry standards for similar services. Daktronics will devote adequate resources to meet its obligations. Daktronics may select the parties delivering services under this Agreement.
- 1.5. Third Party Materials. Third-party Media (defined below), products, materials, and other commercial off-the-shelf ("COTS") products and materials ("Third Party Materials"), if any, are provided to Purchaser exclusively on the license and warranty terms offered by such third party and the COTS sellers. If Daktronics provides any products, software, or services covered by a third-party warranty or license, Daktronics will pass through to Purchaser all warranties or licenses provided by such third party. The remedies provided in such third-party license or warranty will be Purchaser's exclusive remedies with respect to Third Party Materials.
- 1.6. Change Orders. The parties, without invalidating the Agreement, may modify the scope of the Work. The modifications will be referred to as "Change Orders." The parties will mutually agree in writing as to the cost or credit from a Change Order as well as any modifications in delivery time. Daktronics has no obligation to perform any Change Order work without the prior written approval of both parties.
- 1.7. Use of Image. Purchaser permits Daktronics to photograph, make reference to, or take video of the project site and the Deliverables, including both the completed work and the work in progress, for purposes including, but not limited to, use in website and marketing materials, provided that Daktronics may not, without prior written consent, do so in a manner which implies endorsement by Purchaser.
- 1.8. Default. If Purchaser fails to perform any covenant or obligation under this Agreement or any other agreement that Purchaser has with Daktronics, including without limitation the failure to pay, when undisputed invoice is more than 30 days past due, any amounts owed to Daktronics under this Agreement or any other agreement between the parties, Daktronics will be excused from the performance of any of its obligations under this Agreement and any other Agreement it has with the Purchaser until such time as said default is cured, if ever.
- 1.9. Indemnity. Daktronics will indemnify, defend and hold harmless the Purchaser and their respective subsidiaries, officers, directors, shareholders, partners, employees, agents, insurers, successors and assigns from any and all liability, losses, damages, costs or expenses (collectively, "Losses") arising out of or in any way related to: (i) any negligent act or omission by Daktronics or its personnel, agents, subcontractors or others engaged by Daktronics or under Daktronics control related to the execution of this Agreement; (ii) any claim against any indemnified party by reason of or alleging any unauthorized or infringing use by an indemnified party of any patent, process, trade secret, copyright, trademark or other intellectual property right regarding the Daktronics Software and its components; or, (iii) any fine or assessment with respect to any violation or alleged violation of any Applicable Laws regarding safety or health.
- 1.10. Limitation of Liability. The parties agree that in no event whatsoever will the liability of either party exceed the amount of the purchase price. It is agreed that in no event will either party be liable for special, incidental, consequential, or indirect damages, regardless of cause, including, but not limited to: loss of use, loss of profit, loss of business opportunity, and loss of advertising revenue. Purchaser explicitly accepts the provisions of this paragraph in return for the prices granted for the Deliverables. Purchaser understands and agrees that the prices granted herein would be higher in the absence of this limitation of liability. Daktronics will have no liability with respect to claims relating to or arising from the use of Purchaser Assets, or third-party products and services. Limitation of Liability shall not be limited for property damage or personal injury. The parties agree that this clause does not extend Daktronics' liability beyond its own acts or those of its agents/employees.
- 1.11. Excusable Delay. Daktronics shall be excused from any liability under this Agreement for any delay or nonperformance caused by an Excusable Delay Event. Should an Excusable Delay Event prevent or delay performance of the Work or any portion of the Work, Daktronics will be entitled to a reasonable extension of time for performance corresponding to the delay. An "Excusable Delay Event" means any: adverse site conditions (determination of a site condition as "adverse" will be made at the reasonable discretion of Daktronics), natural disaster such as flood, fire, hurricane, earthquake, or other casualty; labor or material shortages or other types of industrial disturbance; quarantines or epidemics; national or regional emergencies; government actions; embargos or blockades; labor strikes, lock-outs, or other labor disturbance; war, invasion, hostilities, terrorist threats or acts, riot or other civil unrest; schedule changes, delays, suspensions, or out-of-sequence work ordered by Purchaser; or any other events or circumstances not within the reasonable control of Daktronics, whether foreseeable or not, and whether similar or dissimilar to any of the foregoing. Provided, however, that a general lack of funds will not be considered an Excusable Delay Event.
- 1.12. Assignment. Intentionally blank.
- 1.13. Acceptance of Terms. Daktronics acceptance of Purchaser's order is on the express condition that the terms and conditions set forth herein will apply to the sale. Any term, provision, or condition in conflict with, in addition to or in modification of any of the terms and conditions herein will not be binding upon Daktronics unless an authorized representative of Daktronics accepts such term, provision, or condition in writing. Daktronics failure to object to any term or condition contained in any communication from Purchaser will not be deemed a waiver of the terms and conditions herein.
- 1.14. Non-solicitation. Purchaser will not, during the term of this Agreement and for twelve (12) months thereafter, solicit, endeavor to entice away, or offer to employ (whether or not on behalf of itself) any Daktronics employee or independent contractor with whom Purchaser has direct contact, or who was specifically identified to Purchaser in connection with this Agreement, without Daktronics written approval, which may be withheld in Daktronics sole discretion. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, will not be construed as a solicitation or inducement, and the hiring of any such employees or independent contractor who freely responds thereto will not be a breach of this paragraph.

1.15. Personal Data. "Personal Data" is any information that relates to an identified or identifiable natural person, or data considered to be personal data as defined under applicable legislation protecting the privacy rights of individuals with respect to their personal data ("Data Protection Laws.") To the extent that either Party receives or provides Personal Data in the course of the performance of this Agreement, the Parties agree that they will comply with applicable Data Protection Laws. Each Party will be responsible for providing, obtaining, and maintaining any notices, consents, or approvals necessary to make such Personal Data available to the other Party for processing or use. Purchaser acknowledges that any information received by a member of Daktronics family of companies may be transferred to locations outside of Purchaser's home country, including to the United States. Daktronics will not share such Personal Data with any third parties except to fulfill the purpose for which it was collected, or as instructed by Purchaser, or when required by law, including to respond to any government or regulatory request, or to enforce this Agreement. Additional information about Daktronics commitment to privacy is available at <https://www.daktronics.com/en-us/about-us/privacy-notice>.

1.16. Arbitration. Intentionally blank.

1.17. Miscellaneous. This Agreement, along with contract UCPJMU5726, is the entire agreement of the parties and supersedes any previous understanding or agreement with respect to its subject matter. This Agreement may not be amended or altered in any manner except in a writing signed by both parties. This Agreement may be executed in counterparts. Each party agrees that an electronic signature or faxed signature will have the same effect as an original signature. This Agreement has no third-party beneficiaries. Except as otherwise explicitly set forth in this Agreement, each party will pay its own expenses, including without limitation accounting and attorneys' fees, in connection with this Agreement. Purchaser and Daktronics are not partners or joint venturers. If any part of this Agreement is in any manner held to be invalid, illegal, void, or to be in conflict with any law, then the validity of the remaining portions or provisions of this Agreement will not be affected, and such part, term, paragraph, or provision will be construed and enforced in a manner designed to effectuate the intent expressed in this Agreement to the maximum extent permitted by law. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

2. TERMS THAT APPLY IF THE WORK INCLUDES CONTENT AND/OR CONTENT SERVICES

2.1. Media. The term "Media" means media of any and all format, whether now known and existing or hereafter discovered or developed, including, without limitation, music, artwork, animations, images, videos, audio, footage, graphics, text, or the Likeness of any individual. "Likeness" includes all attributes of the personality or appearance of a natural person, including name, image, voice, signature, photograph, statements, biographical information, etc.

2.2. Content.

2.2.1. Catalog Content. Daktronics Media that is generally available for purchase to Daktronics customers is considered "Catalog Content." Catalog Content is licensed to Purchaser on a non-exclusive, non-sublicensable, non-transferable, limited basis, and solely (i) for the benefit of the Daktronics Equipment end user, in the ordinary course of the use of the Equipment; or, (ii) for any use specified in the Order Document. Daktronics reserves all rights not expressly granted to Purchaser.

2.2.2. Custom Content: Media that Daktronics creates specifically for Purchaser is considered "Custom Content." Custom Content will be considered a work made for hire under applicable law; provided, however, that the parties' rights with respect to any Catalog Content included in Custom Content will be governed by Section 2.2.1 above.

2.2.3. Project Files: Unless stated in the Agreement, Purchaser is not entitled to any work files, software plug-ins, raw footage or any work that does not constitute the completed Deliverable ("Project Files"). Daktronics will retain Project Files for three (3) years from the date the Deliverable is delivered to Purchaser. In the event a project is revised or updated, Daktronics will retain the files (3) years from the date such revision or update is delivered to Purchaser. Project Files older than three (3) years may be deleted.

2.3. Purchaser Assets. Any Media and Pre-Existing IP that Purchaser provides to Daktronics or directs Daktronics to use ("Purchaser Asset(s)") is the sole responsibility of the Purchaser. Purchaser warrants that no Purchaser Asset violates or infringes upon any intellectual property, publicity, or commercial right of another. Purchaser represents and warrants that Purchaser owns or controls all rights in and to the Purchaser Assets and has the right to grant the license granted. Daktronics assumes no responsibility to determine whether Purchaser Assets are illegal, offensive, or subject to any third-party publicity, intellectual property, or commercial rights. Purchaser grants Daktronics the right to use, reproduce, modify, perform, display, and/or distribute the Purchaser Assets in the manner contemplated by the Agreement. Purchaser must provide Purchaser Assets to Daktronics in a usable file format. Purchaser alone is responsible for providing, obtaining, and maintaining any license, release, notice, consent, or approval allowing the Purchaser Assets to be used in the manner contemplated by this Agreement. However, Daktronics reserves the right to require copies of any such documentation as a condition precedent to delivery of the Deliverables.

3. TERMS THAT APPLY IF THE WORK INCLUDES SOFTWARE, CODE, AND/OR RELATED SERVICES

3.1. Software. The term "Software" means the original computer software program and all whole or partial copies of the software program in whatever form or media provided, including, but not limited to, firmware, machine-readable instructions, its components, manuals and other such documentation data, audio-visual content, (such as images, text, recordings, or pictures), and all other related materials provided pursuant to the terms and conditions of this Agreement. If the Deliverables include Software:

3.1.1. Intentionally blank.

3.1.2. All other Daktronics Software, including firmware, which is furnished to Purchaser is licensed per the terms and conditions of the Software License Agreement as mutually signed between parties and incorporated into contract UCPJMU5726.

3.1.3. Any third-party software is offered to Purchaser as provided in the Section titled "Third Party Materials" elsewhere in this Creative Services Agreement.

3.2. Other. If the Work includes the provision of script, source code, object code, or other sub-element of software that is not otherwise covered by the definition Software or API herein, Purchaser (or End User, if different from Purchaser) is granted a non-exclusive, non-sublicensable and non-transferable, limited license to use such Deliverables solely for the Permitted Use during the term of the Agreement, unless a different license term is stated in the Order Document ("License Term"). If no other Permitted Use is stated, the Permitted Use will be deemed the use of the Deliverable for the benefit of the Daktronics equipment end user, in the ordinary course of such end user's internal business operations only; provided that in no event may such Deliverable be used for any purpose that is to the detriment or commercial disadvantage of Daktronics (such as for developing, using, or providing a competing product or service).