

## TECHSTART SCHOOL PARTICIPATION AGREEMENT

Effective Date: September 1, 2017

This TechStart Participation Agreement ("**Agreement**") is a legal agreement between the Arkansas Public School Resource Center ("**APSRC**") and \_\_\_\_\_ ("**School**").

**Whereas**, Facebook operates a TechStart program ("**Program**") that provides participating schools the option to use certain services (e.g., VR Kits, VR Training, and Events), and has contracted with APSRC to facilitate the participation of Arkansas schools in Facebook's Program; and

**Whereas**, School desires to participate in Facebook's Program;

**Now therefore**, the parties agree as follows:

By the authorized signature below, School agrees to and accepts both the terms of this Agreement and the Facebook Program Terms attached hereto as Appendix A. The number of VR kits to be distributed to School shall be determined solely by APSRC in consultation with the Arkansas Department of Education ("**ADE**"), based in part on criteria identified by Facebook. APSRC shall have no obligation under this Agreement to School other than considering it for inclusion in the Program.

School agrees that any property provided under this Agreement will be recorded as inventory (fixed assets) in the Arkansas Public School Computer Network (APSCN) to the extent required by law or rule. School will report data on usage, including without limitation the number of students have access to or use the equipment, the frequency of access or use, and the amount of time of used. Reports will be made on a schedule and in a format determined by ADE and APSRC. School will cooperate with APSRC to administer anonymous student surveys regarding the Program and use of the equipment.

The parties intend this Agreement to represent a final and complete expression of their understanding. All prior representations, understandings, and discussions are merged herein, and no course of prior dealings between the parties may supplement or explain this document. Each party to this Agreement will be responsible for all acts and omissions of its own staff, employees, officers, agents, and independent contractors. Nothing in this Agreement may be construed to waive the sovereign immunity of the State of Arkansas, or any tort, charitable, statutory, or other immunity held by either party or by their employees or agents. Capitalized terms not defined herein have the meaning given in the Program Terms.

Accepted and agreed to as of the last signature date below by each party's authorized representative:

### SCHOOL

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: Superintendent

Date: \_\_\_\_\_

Notice To: \_\_\_\_\_

Attention: \_\_\_\_\_

### ARKANSAS PUBLIC SCHOOL RESOURCE CENTER

Signature: \_\_\_\_\_

Print Name: Scott Smith

Print Title: Executive Director

Date: \_\_\_\_\_

Notice To: Arkansas Public School Resource Center

1401 W. Capitol, Ste. 315

Little Rock, AR 72201

Attention: Scott Smith

## APPENDIX A

### **Program Terms**

#### **1. Roles and Responsibilities**

- 1.1 **Facebook's Roles and Responsibilities.** During the Term (defined below), Facebook will provide at no charge the following services (collectively, the "**Services**") to the Schools to be accessed and used at the Schools' direction by students 13 years or older currently enrolled at the Schools ("**Students**") and any authorized employees, teachers, officials, or agents of the Schools (together with the Schools and Students, "**Participants**"):
- 1.1.1 A virtual reality classroom kit ("**VR Kit**") consisting of an Oculus ready workstation, monitor, keyboard, mouse, Ricoh Theta 360 camera, Oculus Rift CV1, camera stand, and a "getting started" guide for Students to experience virtual reality ("**VR**") (the VR Kits are subject to third party terms and conditions ("**Third Party Terms**"), which are separate from this Agreement);
  - 1.1.2 A TechStart teacher orientation and training to educate teachers on how to set up, use, and develop on the VR Kits ("**VR Training**"); and
  - 1.1.3 Related educational offerings provided by Facebook at its sole discretion as part of the Program, which may include panel events, hackathons, college tours, and award ceremonies (collectively, "**Events**") (these offerings may be subject to additional terms, which are separate from this Agreement).
- 1.2 **Schools' Roles and Responsibilities.**
- 1.2.1 The Schools will designate a teacher ("**Teacher**") who will attend the VR Training.
  - 1.2.2 The Schools will ensure that the VR Kits are used in compliance with the Third Party Terms, including by not limited to Oculus, Inc.'s Terms of Service, Privacy Policy, and Health and Safety Warnings (collectively, "**Oculus Terms**") (the Oculus Terms are provided with the VR Kits) and the VR Training.
  - 1.2.3 The Schools will ensure that the VR Kits are only used by Participants 13 years or older in the classroom or other Schools' premises, and only under the direct supervision of the Teacher or other authorized School representative.
  - 1.2.4 The Schools are responsible for maintaining the VR Kits, keeping the VR Kits reasonably secure, and for any use of the VR Kits, including by Participants.
  - 1.2.5 The Schools are responsible for any and all content that is downloaded to and uploaded from the VR Kits (including by Participants), will ensure that such content is appropriate for the Participants, and will ensure that any uploaded content complies with the Oculus Terms, is not illegal, and does not infringe any third party's rights.
  - 1.2.6 To the extent that the School and Facebook agree (email sufficient) to host an Event at the School's premises, the School will maintain appropriate and industry standard insurance coverage for such Event, including Personal Injury/Property

Damage Coverage, in a combined single limit of not less than \$1,000,000. A Certificate of Insurance indicating such coverage will be delivered to Facebook upon request.

- 1.2.7 During the Term, the Schools agree to make reasonable efforts to help Facebook improve the Program by providing feedback on the Program, including, by way of example, by filling out anonymous surveys (collectively, “**Feedback**”). Facebook may use such Feedback to improve the Program without obligation or compensation to the Schools or the Participants.
- 1.2.8 Facebook may request that School provide the following information for Students and teachers that participate in the Program: names, email addresses, and contact information for Students and their parents or legal guardians; Student grade levels; teacher names; school affiliation, and the city and state where the School is located (collectively, “**Data**”). Facebook may use the Data in connection with (i) the School nominating particular Students for a TechStart award, (ii) RSVP’ing Students for a particular Event, (iii) operating, developing, analyzing, evaluating, and improving the Services and other educational tools, features, products, and services, and (iv) communicating with Students, teachers, parents, and legal guardians regarding the Services. The School agrees that, to the extent the Data is defined in the School’s Board-approved handbook as or otherwise constitutes “directory information” for purposes of the Family Educational Rights and Privacy Act (“FERPA”), the School may share the Data with Facebook without any additional notices or consents, including under FERPA or other federal or state educational privacy laws (“Education Privacy Laws”).” If any of the Data is not “directory information” for purposes of FERPA, then before permitting an individual Student to participate in the Program, the School shall comply with all applicable law and provide such Student’s parent or legal guardian notice and obtain the verifiable consent of the Student’s parent or legal guardian for that Student to participate in the Program and for the Student and School to disclose Data to Facebook.
- 1.2.9 Other than as provided in Section 1.1 above, the Schools will be responsible for all ancillary costs and expenses resulting from their participation in the Program.
- 1.2.10 The Schools may not use or attempt to use the Program or the Services to take any action that could harm Facebook, interfere with the operation of the Program or the Services, or use the Program or the Services in a manner that violates any laws.
- 1.2.11 The School agrees that a single administrative account will be used for each VR Kit, that the account will be set up by the Teacher or other authorized adult representative of the School, and that only Oculus-owned or other content pre-approved by Facebook shall be utilized during the Program.

- 2. **Voluntary Program.** The Schools acknowledge that they have voluntarily elected to participate in the Program.
- 3. **Changes to the Program.** Facebook may add to, eliminate, or modify the features of the Program or the Services at any time in its sole discretion without any notice or liability to the Schools.

#### **4. Representation and Warranty; Disclaimer**

- 4.1 APSRC/the Schools represent and warrant that they have provided all necessary notices and have obtained all necessary rights, licenses, permissions or consents (including those required by FERPA and any other Education Privacy Laws), and have authority under state and federal law for APSRC/the Schools and the Participants to participate in and use the Program and the Services.
- 4.2 FACEBOOK OR ITS AFFILIATES, AND ITS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS (COLLECTIVELY THE “**FACEBOOK PARTIES**”) MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT THE PROGRAM OR THE SERVICES (INCLUDING THE VR KIT, VR TRAINING, OR EVENTS). APSRC/THE SCHOOLS AND THE PARTICIPANTS USE THE PROGRAM AND SERVICES AT THEIR OWN RISK. THE PROGRAM AND SERVICES ARE PROVIDED “AS IS,” “WITH ALL FAULTS,” AND “AS AVAILABLE.” WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, FACEBOOK DISCLAIMS ALL WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT. THERE IS NO WARRANTY THAT THE PROGRAM OR SERVICES WILL MEET APSRC/THE SCHOOLS’ OR PARTICIPANTS’ NEEDS OR REQUIREMENTS. FACEBOOK DOES NOT WARRANT THAT THE PROGRAM OR SERVICES WILL BE TIMELY, SECURE, SAFE, ACCURATE, OPERATIONAL, ERROR-FREE, COMPLETE, USEFUL, UP-TO-DATE, FREE OF VIRUSES, OR UNINTERRUPTED.

#### **5. Limitation of Liability**

- 5.1 THE FACEBOOK PARTIES WILL NOT BE LIABLE FOR ANY LOST PROFITS OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT OR THE PROGRAM OR THE SERVICES EVEN IF THE FACEBOOK PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FACEBOOK PARTIES’ AGGREGATE LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT OR THE PROGRAM OR THE SERVICES WILL NOT EXCEED ONE HUNDRED DOLLARS (\$100). The parties acknowledge that the Agreement was entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.
- 5.2 The Facebook Parties do not endorse or control, and are not responsible for, any third parties that may be involved in the Program or the Services and/or their products and services. APSRC/the Schools hereby waive and release the Facebook Parties from any claims, damages, liabilities, losses, costs, and expenses including reasonable attorneys’ fees and other professional fees (collectively, “**Claims/Liabilities**”), known and unknown, relating to, arising out of, or in any way connected with any such Claims/Liabilities that APSRC/the Schools have against any such third parties and/or their products and services. IN CONNECTION WITH THE FORGOING, APSRC/THE SCHOOLS HEREBY WAIVE ANY RIGHTS THEY MAY HAVE UNDER CALIFORNIA CIVIL CODE §1542, OR ANY OTHER SIMILAR APPLICABLE STATUTE OR LAW OF ANY OTHER JURISDICTION, WHICH SAYS THAT: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

## **6. Term and Termination**

6.1 The term of this Agreement will commence on the Effective Date listed above and will continue until terminated by either party as permitted hereunder. The parties may terminate this Agreement with or without cause, effective immediately upon providing written notice to the other party, for which email will suffice.

6.2 The following provisions will survive any expiration or termination of this Agreement: Sections 1.2.5, 4, 5, 6.2, 7, and 8.

7. **Publicity.** In order to ensure consistent and accurate public messaging around this collaboration, APSRC/the Schools and Facebook agree to work cooperatively together during the Term to develop and execute a mutually agreed upon communications plan about APSRC/the Schools' participation in the Program. APSRC/the Schools will not disclose any terms of this Agreement to anyone other than their attorneys, accountants, and other professional advisors under a duty of confidentiality except as required by law.

8. **General.** This Agreement will be governed by and construed in accordance with the laws of the State of California and the United States without regard to the conflict of laws provisions therein that would require application of the laws of another jurisdiction. Any suit or proceeding arising out of or relating to this Agreement will be brought in the federal or state courts, as applicable, in San Mateo County, California, and each party irrevocably submits to the jurisdiction and venue of such courts. APSRC/the Schools will not assign any part of this Agreement without Facebook's prior written consent. Any attempted assignment by APSRC/the Schools without consent will be null and void. Facebook may freely assign this Agreement. The term "including" is not intended to limit and means "including without limitation." If any provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement will not be affected. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of those rights. Only an authorized representative of APSRC or Facebook has the authority on such party's behalf to change or waive this Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and any and all written or oral agreements previously existing between the parties are expressly canceled. Except as otherwise expressly provided in this Agreement, any modifications of this Agreement must be in writing and agreed to by both parties. Except as otherwise expressly permitted, each party must deliver all notices or other communications required or permitted under this Agreement in writing to the other party at the address listed below. Each party may change its address for receipt of notice by giving notice of such change to the other party. Nothing herein will constitute any association, partnership or joint venture between the parties, and neither party will have the power to legally bind the other party. This Agreement may be executed in counterparts.

Accepted and agreed to as of the last signature date below by the School's authorized representative:

**SCHOOL:** \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

Notice To: \_\_\_\_\_

Attention: \_\_\_\_\_