Lamar Institute of Technology

GENERAL TERMS AND CONDITIONS

Lamar Institute of Technology (LIT), in compliance with applicable federal and state laws and regulations, does not discriminate on the basis of race, color, national origin, sex, age, religion, disability, handicap, sexual orientation, gender identity or expression, or status as a veteran in any of its policies or procedures. This includes, but is not limited to, admissions, employment, financial aid and educational services.

COMPLETE AGREEMENT: This Attachment, which is hereby incorporated by reference or attachment and made a part of the Contract and/or Purchase Order, along with any other referenced or attached LIT riders, exhibits, terms, conditions and specifications (collectively, the “Contract”) form the sole and exclusive agreement between the parties and together supersede all other writings. Nothing herein shall be construed to be an acceptance of any terms of Contractor. If any provision in the Contract and/or Purchase Order conflicts with these Terms and Conditions the provision contained in these Terms and Conditions shall govern and control.

MODIFICATION: No modification of the Contract shall be effective without LIT’s prior written consent. No course of prior dealings, no usage of the trade and no course of performance shall be used to modify, supplement or explain any terms used in the Contract. LIT will not be bound by any oral statement, verbal agreement, or other representation contrary to the written specifications, terms, and conditions of the Contract.

CANCELLATION: LIT shall have the right to cancel all or any part of the Contract if Contractor breaches any of the terms, conditions, or requirements hereof, or if the Contractor closes its business operations, becomes insolvent or is adjudged bankrupt. Such right of cancellation is in addition to, and not in lieu of, any other remedies which LIT may have at law or in equity.

DEFAULT AND TERMINATION: LIT may terminate the Contract without cause at any time upon thirty (30) days advance written notice to Contractor, in which event Contractor will be entitled to payment of an amount that will compensate Contractor for any goods accepted or services satisfactorily performed in accordance with the Contract from the time of the last payment date to the termination date; provided, that, Contractor has delivered or performed all such goods or services to LIT for which payment is made. Notwithstanding any provision in the Contract to the contrary, LIT will not be required to pay or reimburse Contractor for any goods delivered, services performed, or expenses incurred by Contractor after the date of the termination notice.

(a) In the event of a material failure by a party to the Contract to perform in accordance with the terms of the Contract (a “default”), the other party may terminate the Contract upon thirty days’ advance written notice of termination setting forth the nature of the material failure. Termination will not be effective if the material failure is, in LIT’s sole discretion, fully cured prior to the end of the thirty-day period.

(b) If Contractor fails to cure any default within fifteen days of receiving written notice of the default, LIT will be entitled (but not obligated) to cure the default and will have the right to offset against all amounts due to Contractor under the Contract, including but not limited to any and all reasonable expenses incurred in connection with LIT’s curative actions.

(c) Termination will not relieve Contractor or any of its employees, subcontractors, or agents from liability for any default or breach under the Contract, or any other act or omission of Contractor.

(d) If LIT will make pre-payments to Contractor under the Contract, Contractor will, within thirty days of termination of the Contract, reimburse LIT all fees paid by LIT to Contractor that were (i) not earned by Contractor prior to termination, or (ii) for goods or services that LIT did not receive from Contractor prior to termination.

DELIVERY & SHIPPING: All packages and packing lists must reference LIT’s Purchase Order Number. Failure to do so may result in the shipment being rejected and/or a delay in payment. Time is of the essence and if delivery of conforming goods or performance of services is not completed by the time(s) promised, LIT reserves the right, in addition to its other rights and remedies, to cancel the Contract, to reject non-conforming goods or services in whole or in part upon notice to Contractor,
and/or purchase substitute goods or services elsewhere and charge Contractor with any losses incurred. If a delay in promised delivery is foreseen, Contractor shall give written notice to LIT, and the delivery date may be extended in LIT’s sole discretion. Contractor must keep LIT apprised at all times of the status of delivery and shipping during the Contract. No substitutions or cancellations will be permitted without prior written approval from LIT. Any provisions herein for delivery of goods or performance of services by installments shall not be construed as making the obligation of Contractor severable. All freight, transportation and handling charges must be prepaid by Contractor. Third party freight bills will not be accepted. C.O.D. shipments will not be accepted.

ACCEPTANCE OF PRODUCTS AND SERVICES: All products furnished and all services performed under the Contract shall be to the satisfaction of LIT as determined by its designated Project Manager and in accordance with the specifications, terms, and conditions of the Contract. LIT reserves the right to inspect the products furnished or the services performed, and to determine the quality, acceptability, and fitness of such products or services.

Any work performed under the Contract will be completed to the satisfaction of the designated Project Manager who will, in all cases, determine, in the Project Manager’s sole discretion, the amount, quality, acceptability and fitness of the work that is to be paid for under the Contract. The designated Project Manager will decide all questions that may arise regarding the fulfillment of the Contract by Contractor, and the designated Project Manager’s determination and decision thereon will be final.

If the work performed by Contractor does not conform to the requirements of the Contract as determined by the designated Project Manager, LIT, at its sole option, may request Contractor to re-perform the work at no additional charge to LIT or may request a deduction from the contract price originally mutually agreed upon between Contractor and LIT.

TITLE AND RISK OF LOSS: Title and risk of loss of any goods to be delivered shall not pass to LIT until LIT actually receives, approves, and takes possession of the goods at the point or points of delivery.

ASSIGNMENT AND SUBCONTRACTS: The Contractor’s interest in this Agreement Contractor’s duties and obligations under this Agreement, and the fees due to the Contractor under this Agreement may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (i) not be binding on LIT; (ii) be a breach of this Agreement for which Contract will be subject to all remedial actions provided by Applicable Laws, including Chapter 2161, Texas Government Code, And 34 TAC Chapter 20, §§20.101 – 20.108. However, the benefits and burdens of this Agreement are assignable by LIT.

INDEPENDENT CONTRACTOR: Contractor recognizes that it is engaged as an independent contractor and acknowledges that LIT has no responsibility to provide transportation, insurance, vacation or other fringe benefits normally associated with employee status. Contractor, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with that status, that it will neither hold itself out as, nor claim to be an officer, partner, employee or agent of LIT, and that it will not make any claim, demand or application to or for any right or privilege applicable to an officer, representative, employee or agent of LIT, including unemployment insurance benefits, social security coverage or retirement benefits. Contractor agrees to make its own arrangements for any fringe benefits as it may desire and agrees that it is responsible for all income taxes required by Applicable Laws. All of Contractor's employees providing the Work to LIT will be deemed employees solely of Contractor and will not be deemed for any purposes whatsoever employees, agents or borrowed servants of, acting for or on behalf of, LIT. No acts performed or representations, whether oral or written, made by Contractor with respect to third parties will be binding upon LIT.

WORK MATERIAL: All drawings, specifications, plans, computations, data, photographs, records, models, statements, reports, and other deliverables or materials prepared or produced by Contractor Parties in connection with the Services ("Work Material"), whether or not accepted or rejected by LIT, are the property of LIT and for LIT’s exclusive use and re-use at any time without further compensation and without any restriction. Contractor grants and assigns to LIT all rights in and claims to the Work Material and will cooperate with LIT in obtaining or enforcing LIT’s rights and claims. Contractor will not use the Work Material except as expressly authorized by this Agreement. Contractor will not apply for any copyright, patent or other property right related to the Work Material.
LABOR RELATIONS: Contractor agrees to take immediate and reasonable steps to continue its provision of the Work under this Agreement in the event of any labor dispute or other action involving its employees.

INSURANCE: Contractor, consistent with its status as an independent contractor, will carry and will cause its subcontractors to carry, at least the following insurance in a form, with companies, and in amounts (unless otherwise specified), as LIT may require:

(a) **Workers’ Compensation Insurance** coverage for each of Contractor’s employees employed on this project. Contractor must meet the statutory requirements of the Tex. Lab. Code, 401.011(44); and

(b) **Commercial General Liability Insurance** limits of not less than:
- Bodily Injuries (including accidental death) $500,000
- Per Occurrence $500,000
- Property Damage $500,000

(c) **Owner’s Protective Liability Insurance** limits of not less than:
- Bodily Injuries (including accidental death) $500,000
- Per Occurrence $500,000
- Property Damage $500,000

(d) **Commercial Automobile Liability Insurance** limits, covering all owned, non-owned or hired automobiles of not less than:
- Bodily Injuries (including accidental death) $500,000
- Per Occurrence $500,000
- Property Damage $500,000

Such Insurance shall be primary and name LIT, The Texas State University System (TSUS), their Regents and employees added as additional insureds. The additional insured status must cover completed operations as well. This is not applicable to the workers’ compensation and umbrella liability policies.

The workers’ compensation and owners’ protective liability policies will provide a waiver of subrogation in favor of LIT.

Contractor will deliver to LIT:

1. Evidence, satisfactory to LIT, of the existence of all insurance promptly after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to be performed by Contractor under this Agreement.

2. Additional evidence, satisfactory to LIT, of the continued existence of all insurance not less than thirty days prior to the expiration of any insurance. Insurance policies, with the exception of Workers’ Compensation, will name and the evidence will reflect LIT as an Additional Insured and will provide that the policies will not be canceled until after thirty days unconditional written notice to LIT.

The insurance policies required in this Agreement will be kept in force for the periods specified below:

1. Commercial General Liability Insurance, Commercial Automobile Liability Insurance, will be kept in force until receipt of Final Payment by LIT to Contractor; and

2. Workers’ Compensation Insurance and Owner's Protective Liability Insurance will be kept in force until the Work has been fully performed and accepted by LIT in writing.

INDEMNIFICATION: CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY LIT, AND HOLD HARMLESS LIT AND THEIR REGENTS,
OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, BY ANY PERSON OR ENTITY, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER, TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF CONTRACTOR, OR IT AGENTS, EMPLOYEES, SUBCONTRACTORS, SUPPLIERS OR ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOM ACTS CONTRACTOR MAYBE LIABLE. IN ADDITION, CONTRACTOR WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY LIT, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT, WHICH ANY INDEMNITEE HAS, BY LAW OR EQUITY. IN THE EVENT OF LITIGATION, LIT AGREES TO COOPERATE REASONABLY WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

PAYMENT; SALES TAX; ELECTRONIC FUNDS TRANSFER: (a) So long as Contractor has provided LIT with its current and accurate Federal Tax Identification Number in writing and Contractor is not in default under this Agreement, LIT will pay Contractor for goods and services in accordance with the Prompt Payment Provisions of Chapter 2251, Texas Government Code. If LIT disapproves any invoice amount, LIT will give Contractor specific reasons for its disapproval in writing. (b) LIT, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with §151.309, Texas Tax Code, and Title 34 Texas Administrative Code (“TAC”) §3.322. (c) Section 51.012, Texas Education Code, authorizes LIT to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from LIT through electronic funds transfer methods, including the automated clearing house system (“ACH”). Prior to the first payment under this Agreement, LIT may confirm Contractor’s banking information. Any changes to Contractor’s banking information must be communicated to LIT in writing at least thirty (30) days in advance of the effective date of the change.

The Contractor shall not begin or provide any services until issuance of a Contract/Purchase Order by LIT.

Submit invoices to:
Lamar Institute of Technology
Attn: Accounts Payable
P. O. Box 10043, Beaumont, Texas 77710

PAYMENT OF DEBTS OR DELINQUENCY TO THE STATE OF TEXAS: Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor agrees that any payments owing to Contractor under the Contract may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.

TRAVEL EXPENSES: If LIT specifies in writing that travel is a part of the services under the Contract, Contractor agrees and acknowledges that all travel expenses will be subject to the then current rates for State of Texas employees as noted by the Texas Comptroller of Public Accounts https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php with regard to meals, lodging, mileage and all other expenses related to travel. Further, Contractor agrees and acknowledges that Contractor will not be reimbursed by LIT for expenses which are prohibited, or which exceed the allowable amounts set forth by the Comptroller. As a condition precedent to receiving reimbursement for expenses and disbursements, Contractor will submit to LIT receipts, invoices, and other documentation as required by LIT.

NON-DISCLOSURE: Unless required by law or consented to in writing by LIT, no disclosure, description, or other communication of any sort shall be made by Contractor to any third party regarding LIT’s purchase of goods or services hereunder, or of the details and characteristics thereof. Anything furnished to Contractor by LIT pursuant to the Contract, including without limitation, samples, drawings, patterns and materials shall remain the property of LIT, shall be held at
Contractor’s risk, and shall be returned upon completion of the work. No disclosure or reproduction thereof in any form shall be made without LIT’s prior written consent.

ASSIGNMENT OF OVERCHARGE CLAIMS: Contractor hereby assigns to LIT any and all claims for overcharges associated with the Contract arising under the antitrust laws of the United States, 15 USC 1, or arising under the antitrust laws of the State of Texas, Texas Business and Commerce Code Chapter 15.

AUTHORIZED TO CONDUCT BUSINESS IN TEXAS AND EXECUTE AGREEMENTS: If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Contract, and the individual executing the Contract on behalf of Contractor has been duly authorized to act on its behalf.

NO INDUCEMENT FOR CONTRACT AWARD: Contractor affirms that it has not given or offered to give, nor does Contractor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the Contract.

TAX CERTIFICATION: If Contractor is a taxable entity as defined by Texas Tax Code Chapter 171 (“Chapter 171”), then Contractor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

ANTITRUST CERTIFICATION: Contractor certifies that neither Contractor nor any firm, corporation, partnership or institution represented by Contractor, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, Texas Business and Commerce Code Chapter 15, or the antitrust laws of the United States, 15 USC 1, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.

TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION: Pursuant to Texas Family Code Section 231.006 relating to child support, Contractor certifies that it is not ineligible to receive the award of or payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.

DISCLOSURE OF OWNERSHIP INTEREST OR RELATIONSHIP: Contractor certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Contractor that is a sole proprietorship, the officers or directors of any Contractor that is a corporation, the partners of any Contractor that is a partnership, the joint venturers of any Contractor that is a joint venture, or the members or managers of any Contractor that is a limited liability company, on one hand, and an employee of any institution of The Texas State University System on the other hand, other than the relationships which have been previously disclosed to LIT in writing, and (ii) Contractor has not been an employee of any institution of The Texas State University System within the immediate twelve (12) months prior to the submittal deadline, if applicable.

CERTAIN BIDS AND CONTRACTS PROHIBITED: Contractor represents that it is in compliance with Texas Government Code Section 2155.004, and that no compensation has been received for its participation in the preparation of the requirements or specifications for this Contract. In addition, Contractor certifies that an award of a contract to it will not violate Texas Government Code Section 2155.006, prohibiting LIT from entering into a contract that involves financial participation by a person who, during the previous five (5) years, has been convicted of violating federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina, Hurricane Ike, or any other disaster occurring after September 24, 2005. Pursuant to Texas Government Code Sections 2155.004 and 2155.006, Contractor certifies that it is not ineligible to receive the award of or payments under the Contract and acknowledges that the Contract may be terminated and payment withheld if these certifications are inaccurate.

OCCUPATIONAL SAFETY AND HEALTH COMPLIANCE: Contractor represents and warrants that all products and
services offered to LIT under this Contract meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the Texas Hazard Communication Act (Texas Health and Safety Code Chapter 502), and all related regulations in effect or proposed as of the date of this Contract.

EQUAL EMPLOYMENT/EQUAL OPPORTUNITY: Pursuant to Applicable Laws, Contractor represents and warrants that it is an equal opportunity employer and does not discriminate on the basis of race, color, religion, national origin, age, mental or physical disability, sexual orientation or gender identity.

DEBARMENT: Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (U.S.) federal government procurement or non-procurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs (http://www.sam.gov/) issued by the U.S. General Services Administration. “Principals” means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to LIT if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when LIT executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to LIT, LIT may terminate this Agreement for default by Contractor.

PRODUCTS AND MATERIALS PRODUCED IN TEXAS: If Contractor will provide services under the Agreement, Contractor covenants and agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under the Agreement, Contractor will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

TEXAS HAZARD COMMUNICATION ACT: Contractor is familiar and in full compliance with the Texas Hazard Communication Act (Texas Health and Safety Code Chapter 502), and will provide either (i) a Material Safety Data Sheet ("MSDS") for each product Contractor, its employees, agents or subcontractors brings on LIT’s premises, or (ii) a statement of exemption if the product is not covered by the Texas Hazard Communication Act.

BEST VALUE PRICING: The price to be paid by LIT will be that contained in Contractor's quote, bid or proposal, which Contractor warrants to be no higher than Contractor's current prices on orders by others for goods or services of the kind covered by the Contract for similar quantities to similar customers under similar conditions. In the event Contractor breaches this warranty, the prices will be reduced to Contractor's current prices on orders by others or, in the alternative, LIT may cancel this Contract at its sole option without liability to Contractor.

LOSS OF FUNDING: Performance by LIT under the Contract may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The Texas State University System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or if the Board fails to allocate the necessary funds, then LIT will issue written notice to Contractor and LIT may terminate the Contract without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of LIT.

NON-WAIVER OF DEFAULTS: Any failure of LIT to enforce or require the strict keeping and performance of any of the terms and conditions of the Contract, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions, or rights, and shall not affect or impair the same, or the right of LAMAR INSTITUTE OF TECHNOLOGY at any time to avail itself of the same.

WARRANTIES: In addition to all warranties established by law, Contractor hereby warrants and agrees that:

(a) All goods and services covered by the Contract shall conform to the specifications, drawings, samples or other descriptions set forth herein or otherwise furnished or adopted by LIT, and shall be merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. LIT shall have the right of inspection and approval, and may, at Contractor's expense, reject and return non-conforming goods or require re-performance
of services which are not in compliance with the requirements of the Contract. Defects shall not be deemed waived by LIT’s failure to notify Contractor upon receipt of goods or completion of services, or by payment of invoice.

(b) All articles and/or services provided pursuant to the Contract shall meet or exceed the Safety Standards established and promulgated under the Federal Occupational Safety and Health Administration (Public Law 91-596) and its regulations in effect or proposed as of the date of the Contract.

(c) All goods delivered pursuant to the Contract shall conform to standards established for such goods in accordance with any applicable federal, state or local laws and regulations, unless otherwise indicated herein.

(d) The use or sale of any goods delivered hereunder, or any part thereof, except goods produced to LIT’s drawings or specifications, does not infringe any patent, trademark, service mark, copyright, or other third party intellectual property right.

PUBLICITY: Contractor agrees that it shall not publicize the Contract or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of LIT’s employees or use LIT’s name in connection with any sales promotion or publicity event without the prior express written approval of LIT.

PRODUCT RECALL: Contractor shall, immediately upon discovery, advise LIT of any or all required replacement or modifications to equipment or component part(s) thereof or withdrawal of a product by reason of safety hazard or recall. Any verbal notification must be confirmed in writing within twenty-four (24) hours of such verbal notification. Formal notices must be submitted to the following address:

Lamar Institute of Technology
Attention: Purchasing Office
P.O. Box 10043, Beaumont, TX 77710

Email: purchasing@lit.edu

BREACH OF CONTRACT CLAIMS: To the extent that Chapter 2260, Texas Government Code, is applicable to the 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, will be used by LIT and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of LIT will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Agreement by LIT nor any other conduct, action or inaction of any representative of LIT relating to the Agreement constitutes or is intended to constitute a waiver of LIT’s or the state's sovereign immunity to suit; and ii) LIT has not waived its right to seek redress in the courts.

NOTICES: Except as otherwise provided in this Contract, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Contract will be in writing and will be sent via certified mail, hand delivery, overnight courier, or email as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, or email when received, to:

Lamar Institute of Technology:
Attention: Purchasing and Contract Office
P.O. Box 10043, Beaumont, TX 77710

Or via email: purchasing@lit.edu

SEVERABILITY: In the event that any provision of the Contract, or the application thereof to any person or circumstance, is determined to be invalid, unlawful, or unenforceable to any extent, the remainder of the Contract, and the application of such provision to persons or circumstances other than those to which it is determined to be unlawful, invalid, or unenforceable to any extent, shall continue to be valid and may be enforced to the fullest extent permitted by law.

FORCE MAJEURE: Except as otherwise provided, neither Contractor nor LIT, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this agreement caused by Force Majeure. The existence of such causes...
of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. “Force Majeure” is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such Force Majeure or otherwise waive this right as a defense.

ACCESS BY INDIVIDUALS WITH DISABILITIES: Contractor represents and warrants (the “EIR Accessibility Warranty”) that any electronic and information resources and all associated information, documentation, and support provided to LIT by Contractor under the Contract (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, Rule 206.70 of the Texas Administrative Code (as authorized by Texas Government Code Chapter 2054, Subchapter M). To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to LIT, either (i) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty, or (ii) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event Contractor is unable to do so, then LIT may terminate the Contract without further liability and Contractor will refund to LIT all amounts LIT has paid under the Contract within thirty (30) days of the termination date.

ETHICS MATTERS; NO FINANCIAL INTEREST: Contractor and its employees, agents, representatives and subcontractors have read and understand LIT’s Conflicts of Interest Policy and Code of Ethics available at LIT Policies and Procedures The Texas State University System Rules and Regulations, Chapter VIII, and applicable state ethics laws and rules, including Senate Bill 20 (84th Texas Legislature, 2015). Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause LIT employees to violate LIT’s Conflicts of Interest Policy, provisions described by LIT’s Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of the Contract.

UNDOCUMENTED WORKERS: The Immigration and Nationality Act (8 United States Code 1324a) ("Immigration Act") makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form ("I-9 Form") as the document to be used for employment eligibility verification (8 Code of Federal Regulations 274a). Among other things, Contractor is required to: (i) have all employees complete and sign an I-9 Form certifying that they are eligible for employment; (ii) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (iii) record information about the documents on the I-9 Form and complete the certification portion of the I-9 Form; and (iv) retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual’s national origin or citizenship status. If Contractor employs unauthorized workers during performance of the Contract in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, LIT may terminate the Contract immediately without further liability. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

PATENT, TRADEMARK, COPYRIGHT, AND OTHER INFRINGEMENT CLAIMS: Contractor shall indemnify, save and hold harmless LIT from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from LIT’s or Contractor's use of or acquisition of any services or other items provided to LIT by Contractor or otherwise to which LIT has access as a result of Contractor's performance under Contract, provided that LIT shall notify the Contractor of any such claim within a reasonable time of LIT’s receipt of notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify LIT of such claim within five business days of such notice. No settlement of any such claim shall be made by Contractor without LIT’s prior written approval. Contractor shall reimburse LIT for any claims, damages, losses, costs, expenses, judgments, or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of LIT’s legal counsel and shall also pay costs of multiple counsel, if required, to avoid conflicts of interest.

CONFIDENTIALITY AND SAFEGUARDING OF LIT RECORDS; PRESS RELEASES; PUBLIC INFORMATION: Under the Contract, Contractor may create, receive from or on behalf of LIT, or have access to, records or record systems (collectively, "LIT Records"). Among other things, LIT Records may contain social security numbers, credit card numbers, or
data protected or made confidential or sensitive by Applicable Laws, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 United States Code §1232g ("FERPA"). If LIT Records are subject to FERPA, (a) LIT designates Contractor as a LIT official with a legitimate educational interest in LIT Records, and (b) Contractor acknowledges that its improper disclosure or re-disclosure of personally identifiable information from LIT Records will result in Contractor's exclusion from eligibility to contract with LIT for at least five (5) years. Contractor represents, warrants, and agrees that it will: (i) hold LIT Records in strict confidence and will not use or disclose LIT Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by LIT in writing; (ii) safeguard LIT Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Contractor protects its own confidential information; (iii) continually monitor its operations and take any action necessary to assume that LIT Records are safeguarded and the confidentiality of LIT Records is maintained in accordance with all applicable laws and the terms of this Agreement; and (iv) comply with LIT's rules, policies, and procedures regarding access to and use of LIT's computer systems. At the request of LIT, Contractor agrees to provide LIT with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of LIT Records.

**Notice of Impermissible Use.** If an impermissible use or disclosure of any LIT Records occurs, Contractor will provide written notice to LIT within one (1) day after Contractor's discovery of that use or disclosure. Contractor will promptly provide LIT with all information requested by LIT regarding the impermissible use or disclosure.

**Return of LIT Records.** Contractor agrees that within thirty days after the expiration or termination of this Agreement, for any reason, all LIT Records created or received from or on behalf of LIT will be (i) returned to LIT, with no copies retained by Contractor; or (ii), destroyed if return is not feasible. Twenty days before destruction of any LIT Records, Contractor will provide LIT with written notice of Contractor's intent to destroy LIT Records. Within five (5) days after destruction, Contractor will confirm to LIT in writing the destruction of LIT Records.

**Disclosure.** If Contractor has need to disclose any LIT Records to a subcontractor or agent, Contractor will first secure written permission from LIT and then require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Agreement.

**Press Releases.** Except when defined as part of the Work under the Agreement, Contractor will not make any press releases, public statements, or advertisement referring to the Work or the engagement of Contractor as an independent contractor of LIT in connection with the Work, or release any information relative to the Work for publication, advertisement or any other purpose without the prior written approval of LIT.

**Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if LIT reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Agreement, LIT may immediately terminate this Agreement without notice or opportunity to cure.

**Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

**Public Information.** LIT strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act, Chapter 552, Texas Government Code. Contractor is required to make any information created or exchanged with the state pursuant to this contract that is not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. The following format shall be deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format.

**COMPLIANCE WITH LAMAR INSTITUTE OF TECHNOLOGY SYSTEM INFORMATION RESOURCES USE AND SECURITY POLICY:** Contractor agrees to adhere to all state and federal laws and The LIT Board of Regents’ Rules and policies pertaining to the protection of LIT’s Information Resources and privacy of Sensitive Data, as those terms are defined in UTS165. Further, Contractor represents and warrants that it will:
• Hold all Sensitive Data in the strictest confidence;
• Not release any Sensitive Data concerning a LIT student unless Contractor obtains LIT’s prior written approval and performs such a release in full compliance with all applicable privacy laws, including Family Educational Rights and Privacy Act (FERPA);
• Not otherwise use or disclose Sensitive Data except as required or permitted by law;
• Safeguard Sensitive Data according to all commercially reasonable administrative, physical, and technical standards (e.g., such standards established by the National Institute of Standards and Technology or the Center for Internet Security);
• Continually monitor its operations and take any action necessary to ensure Sensitive Data is safeguarded; and
• Comply with LIT Vendor Access Requirements.

Contractor must provide written notice to LIT within one (1) business day of Contractor’s discovery of any unauthorized use or disclosure of Sensitive Data, and Contractor shall provide all information requested by LIT or the Texas State University System concerning such unauthorized use or disclosure.

Pursuant to Title 1 Texas Administrative Code Section 202.75 (7) and to ensure compliance with UTS165 and state laws and regulations related to the use and security of Information Resources, LIT, at its sole cost and expense, shall have the right to audit Contractor’s systems to ensure that Information Resources and Sensitive Data are adequately protected.

RIGHT TO PROTECT INFORMATION RESOURCE SECURITY: LIT reserves the right to change or modify without consent any information resource, including but not limited to operating systems, hardware, and/or network configuration, in order to protect LIT’s Information Resources against any security vulnerabilities and unauthorized access or abuse. Further, if Contractor will provide maintenance under the Contract, Contractor warrants that upon routine maintenance and/or notification by LIT of security vulnerability that such maintenance shall include the installation of operating system and/or application patches and upgrades that will protect LIT’s Information Resources against any security vulnerabilities and unauthorized access or abuse.

WARRANTY AGAINST SPYWARE, MALWARE, AND COLLECTION OF PRIVATE INFORMATION: Contractor warrants that products purchased by LIT do not contain spyware or malware, and that the products do not collect and/or distribute information that could be considered private without LIT’s and the actual users’ express consent.

REMOTE NETWORK ACCESS FOR MAINTENANCE OR REPAIRS: If Contractor will provide maintenance or repair services under the Contract, access to LIT’s information resources for remote maintenance or repairs by Contractor or other authorized vendors shall be limited to use of approved network connectivity access methods such as Virtual Private Network or third party remote dial-up access. Access requests to LIT’s Information Services Department on behalf of Contractor or other authorized vendors shall be the responsibility of the information resource owner.

IMPLEMENTATION AND/OR MAINTENANCE OF INFORMATION SYSTEMS: To the extent applicable to the services Contractor will provide under the Contract, any implementation and/or maintenance of information systems shall be performed in accordance with LIT’s Information Resources policies and practice standards as defined by Texas Administrative Code.

SOFTWARE INDEMNIFICATION: If Contractor will provide any software under the Contract, Contractor warrants that it has the full right to grant this entire license to LIT. At Contractor’s expense, Contractor shall hold harmless, indemnify, and defend LIT against any claim that any software or documentation provided to LIT by Contractor infringes a patent, copyright, trade secret or other proprietary right of a third party in the United States and shall pay all costs, damages, and attorney’s fees that a court finally awards as a result of such claim or that are paid in settlement of such claim. To qualify for such defense and payment, LIT will: (i) give Contractor prompt written notice of such claim; and (ii) subject to the statutory duty of the Texas Attorney General, allow Contractor to control, and will fully cooperate with Contractor in, the defense against such claim and all related negotiations. In the event such claims are raised against both LIT and Contractor, LIT may, at its option and expense, retain its own counsel to act as co-counsel in such defense and related negotiations. Contractor’s obligation under this Section is conditioned upon LIT’s agreement that, if the operation of any software provided by Contractor becomes or, is likely to become, the subject of such claim, LIT shall permit Contractor, at Contractor’s option and expense, to either procure the right
for LIT to continue to use the software or replace or modify the software so that it becomes non-infringing and such replacement software or modifications meet or exceed the functionality of the original software. In the event Contractor is unwilling or unable to procure the right to use the software or replace or modify it as described above, Contractor shall refund to LIT any license fees and, if applicable, professional services or installation fees paid to Contractor by LIT relating to such software.

**WARRANTY AGAINST SELF DISABLING CODES:** If Contractor will provide any software under the Contract, Contractor warrants that any software it provides shall not be subject to any time-based, activity-based, or event-based self-disabling codes once Contractor has received payment.

**SOFTWARE ACCEPTANCE:** If Contractor will provide any software under the Contract, upon installation of any software by Contractor, Contractor shall demonstrate to LIT the operation of the software in LIT’s test and live environments as performing in accordance with the provided documentation and specifications.

(a) Acceptance of software shall occur after thirty consecutive calendar days of Stable operation following First Productive Use. At LIT’s option, the running of the thirty calendar day period may be halted from time to time for non-Urgent Issue(s), and shall be restarted to day zero for Urgent Issue(s), as defined herein. Upon successful completion of the thirty calendar day period, LIT shall notify Contractor in writing of LIT’s acceptance of the software, which notice shall not be unreasonably withheld.

(b) “First Productive Use” shall mean seventy-two hours of continuous operation after the date on which the software is first used with LIT’s live data to perform the intended function of the software. First Productive Use shall be restricted to the live production system and will not include the test systems.

(c) “Stable” shall mean computer jobs, tasks, transactions or procedures consistently performing in accordance with the provided documentation and specifications ending in a normal mode and not ending abnormally.

(d) “Urgent Issue” shall mean any issue which results in a loss of major system functionality, a loss of data recovery, or incorrect data as determined by LIT in its sole discretion.

**HOSTED SERVICES (“CLOUD” SERVICES):** If Contractor will provide any services and/or products to LIT related to the information and/or content owned by LIT that will not reside on LIT-owned servers or systems, Contractor shall complete a Hosted Services Checklist (“Checklist”). Moreover, Contractor shall consult with both LIT’s Information Services Department and LIT’s Chief Information Security Officer related to the services or products provided to LIT.

**CYBERSECURITY TRAINING PROGRAM:** Pursuant to Section 2054.5192, Texas Government Code, Contractor and its subcontractors, officers, and employees, who are provided credentials granting access to LIT’s computer system also known as LIT’s information system, must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code as selected by LIT. The cybersecurity training program must be completed during the term and any renewal period of this Agreement. Contractor shall verify in writing completion of the program to LIT within the first thirty (30) calendar days of the term and any renewal period of this Agreement. Failure to comply with the requirements of this section are grounds for termination for cause of this Agreement.

**NONDISCRIMINATION:** In their execution of this agreement, all Contractors and others acting by or through them shall comply with all federal and state policies and laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans’ status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this agreement.

**ELIGIBILITY CERTIFICATIONS:** Pursuant to Sections 2155.004 and 2155.006, *Texas Government Code*, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if these certifications are inaccurate.

**CERTIFICATION REGARDING BOYCOTTING ISRAEL** - Pursuant to Chapter 2270, *Texas Government Code*, LIT General Terms and Conditions Revised 5/7/2020
Contractor certifies Contractor (i) does not currently boycott Israel; and (ii) will not boycott Israel during the Term of the Contract. Contractor acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate.

**CONTRACTOR CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS:** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate.

**COMPLIANCE WITH LAW:** Contractor is aware of, is fully informed about, and in full compliance with its obligations under existing applicable law and regulations, including Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000(D)), Executive Order 11246, as amended (41 CFR 60-1 and 60-2), the Vietnam Era Veterans Readjustment Act of 1974, as amended (41 CFR 60-250), the Rehabilitation Act of 1973, as amended (41 CFR 60- 741), the Age Discrimination Act of 1975 (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), Omnibus Budget Reconciliation Provision, Section 952, the Fair Labor Standards Act of 1938, Sections 6, 7, and 12, as amended, the Immigration Reform and Control Act of 1986, and Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 96-507), the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.), the Civil Rights Act of 1991, and all laws and regulations and executive orders as are applicable.

**LAMAR INSTITUTE OF TECHNOLOGY PRIMESE RULES:** If the Contract requires Contractor’s presence on LIT’s premises or in LIT’s facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable LIT rules and policies, including without limitation those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, use of tobacco, access restrictions, traffic, and parking. LIT policies may be viewed at [https://www.lit.edu](https://www.lit.edu).

**LAMAR INSTITUTE OF TECHNOLOGY’S RIGHT TO AUDIT:** At any time during the term of the Contract and for a period of seven (7) years thereafter, LIT or a duly authorized audit representative of LIT, The Texas State University System, or the State of Texas, reserves the right to audit Contractor's records and books relevant to all services provided under the Contract. In the event such an audit by LIT reveals any errors/overpayments by LIT, Contractor shall refund LIT the full amount of such overpayments within thirty days of such audit findings, or LIT, at its sole option, may deduct such overpayments from any amounts LIT is required to pay Contractor under this or any Contract.

**STATE AUDITOR’S OFFICE:** Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State of Texas Auditor's Office or any successor agency ("Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), Texas Education Code. Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of the Work as requested. Contractor's failure to comply with this requirement shall constitute a material breach of Agreement and shall authorize LIT and the State of Texas to assess immediately appropriate damages for such failure. Contractor acknowledges and understands that the acceptance of funds under Agreement shall constitute consent to an audit by the State Auditor, Comptroller or other agency of the State of Texas. Contractor shall ensure that this paragraph concerning the State’s authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

**LIMITATIONS:** The Parties are aware that there are constitutional and statutory limitations on the authority of LIT (a State Agency) to enter into certain terms and conditions that may be a part of this Agreement, including those terms and conditions relating to liens on LIT’s property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’ fees; dispute resolution; indemnities; and confidentiality (collectively, the “Limitations”), and terms and conditions related to the Limitations will not be binding on LIT except to the extent

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AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

GOVERNING LAW AND VENUE: The Agreement and all claims arising from the Agreement shall be interpreted and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Any judicial action or proceeding between the parties relating to the Agreement and all claims arising from the Agreement shall be brought in the federal or state courts serving Jefferson County in the State of Texas.

CAPTIONS: The captions of sections and subsections are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

EXTERNAL TERMS: This Contract completely supplants, replaces, and overrides all other terms and conditions or contracts, written or oral, concerning Contractor’s performance or provision of goods or services under this Contract (“External Terms”). The External Terms are null and void and will have no effect under this Agreement, regardless of whether LIT or its employees, contractors, or agents express assent or agreement to the External Terms. The External Terms include any shrink wrap, clickwrap, browse wrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that LIT or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.

REPRESENTATIONS AND WARRANTIES BY CONTRACTOR: If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

APPLICABLE TEXAS LAWS APPLY: In accordance with Texas Education Code, Section 51.9335 (h), any Contract for the acquisition of goods and services to which an institution of higher education is a party, any provision required by applicable law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:

- Whether the provision appears on the face of the Agreement or Contract; or
- Whether the Agreement or Contract includes any provision to the contrary.

SOVEREIGN IMMUNITY: Notwithstanding any provision of the Contract, nothing herein shall be construed as a waiver by LIT of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in the Contract and Addendum(s), the terms of this paragraph shall control.