

GENERAL TERMS AND CONDITIONS

Lamar University, 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 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.

1. **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 Lamar University 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 Supplier.
2. **MODIFICATION:** No modification of the Contract shall be effective without Lamar University'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. Lamar University will not be bound by any oral statement, verbal agreement, or other representation contrary to the written specifications, terms, and conditions of the Contract.

3. **CANCELLATION:** Lamar University shall have the right to cancel all or any part of the Contract if Supplier breaches any of the terms, conditions, or requirements hereof, or if the Supplier 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 Lamar University may have at law or in equity.

4. DEFAULT AND TERMINATION:

- (a) Lamar University may terminate the Contract without cause at any time upon thirty (30) days' advance written notice to Supplier, in which event Supplier will be entitled to payment of an amount that will compensate Supplier 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, Supplier has delivered or performed all such goods or services to Lamar University for which payment is made. Notwithstanding any provision in the Contract to the contrary, Lamar University will not be required to pay or reimburse Supplier for any goods delivered, services performed, or expenses incurred by Supplier after the date of the termination notice that could have been avoided or mitigated by Supplier.
- (b) 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 (30) days' advance written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. Termination will not be effective if the material failure is fully cured prior to the end of the thirty-day period.
- (c) If Supplier fails to cure any default within fifteen (15) days of receiving written notice of the default, Lamar University will be entitled (but not obligated) to cure the default and will have the right to offset against all amounts due to Supplier under the Contract, including but not limited to any and all reasonable expenses incurred in connection with Lamar University's curative actions.
- (d) Termination will not relieve Supplier from liability for any default or breach under the Contract, or any other act or omission of Supplier.
- (e) If Lamar University will make pre-payments to Supplier under the Contract, Supplier will within thirty (30) days of termination of the Contract reimburse Lamar University all fees paid by Lamar University to Supplier that were (i) not earned by Supplier prior to termination, or (ii) for goods or services that Lamar University did not receive from Supplier prior to termination.

5. **DELIVERY & SHIPPING:** All packages and packing lists must reference Lamar University'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, Lamar University 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 reasonable notice to Supplier, and/or purchase substitute goods or services elsewhere and charge Supplier with any losses incurred. If a delay in promised delivery is foreseen, Supplier shall give written notice to Lamar University, and the delivery date may be extended in Lamar University's sole discretion.

Supplier must keep Lamar University apprised at all times of the status of the Contract. No substitutions or cancellations will be permitted without prior Lamar University approval. Any provisions herein for delivery of goods or performance of services by installments shall not be construed as making the obligation of Supplier severable. Freight term is FOB. Prices shall include all shipping and handling charges unless otherwise specified. All freight, transportation and handling charges must be prepaid by Supplier. Third party freight bills will not be accepted. **C.O.D. shipments will not be accepted.**

6. **PAYMENT:** Payment term is net 30 day. Invoices should be sent to AccountsPayable@lamar.edu and include the Purchase Order number.
7. **ACCEPTANCE OF PRODUCTS AND SERVICES:** All products furnished and all services performed under the Contract shall be to the satisfaction of Lamar University as determined by its designated Project Manager and in accordance with the specifications, terms, and conditions of the Contract. Lamar University 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 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 Supplier, and the designated Project Manager's determination and decision thereon will be final and conclusive.

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

8. **TITLE & RISK OF LOSS:** Title and risk of loss of goods shall not pass to Lamar University until Lamar University actually receives, approves, and takes possession of the goods at the point or points of delivery.
9. **ASSIGNMENT AND SUBCONTRACTS:** No right or interest in the Contract may be assigned, nor any obligation of Supplier delegated, to any third party without the prior written consent of Lamar University. Any such assignment or delegation by Supplier shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
10. **INDEPENDENT CONTRACTOR:** For all purposes of the Contract and notwithstanding any provision of the Contract to the contrary, Supplier is an independent contractor and is not a state employee, partner, joint venturer, or agent of Lamar University. Supplier shall not bind nor attempt to bind Lamar University to any agreement or contract. As an independent contractor, Supplier is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.
11. **INSURANCE:** Supplier, consistent with its status as an independent contractor, shall carry and will cause its subcontractors to carry, at least the following insurance in the form, with companies admitted to do business in the State of Texas and having an A.M. Best Rating of A:-VII or better, and in amounts (unless otherwise specified), as Lamar University may require:

- (a) Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employer's Liability - Each Accident	\$1,000,000
Employer's Liability - Each Employee	\$1,000,000

Employer's Liability - Policy Limit \$1,000,000

Policies must include (i) Other States Endorsement to include Texas if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation in favor of Lamar University.

- (b) Commercial General Liability Insurance with limits of not less than:

General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$ 50,000
Medical Expenses (any one person)	\$ 10,000

Policy shall include independent contractor's liability covering, but not limited to, the liability assumed under the indemnification provision of the Contract, fully insuring Supplier (or Supplier's subcontractors') liability for bodily injury (including death) and property damage.

- (c) Commercial Automobile Liability Insurance covering all owned, non-owned/leased or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage.

Certificates evidencing such coverage must be furnished to Lamar University prior to the start of work by the insurance carrier and name Lamar University as holder and additionally insured. Certificates shall not be cancelable without thirty (30) days prior written notice.

12. INDEMNIFICATION:

- (a) TO THE FULLEST EXTENT PERMITTED BY LAW, SUPPLIER SHALL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY LAMAR UNIVERSITY, AND HOLD HARMLESS LAMAR UNIVERSITY AND THE TEXAS STATE UNIVERSITY SYSTEM, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM SUPPLIER'S PERFORMANCE UNDER THE CONTRACT AND WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION, OR WILLFUL MISCONDUCT OF SUPPLIER, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY SUPPLIER, OR ANYONE FOR WHOSE ACTS SUPPLIER MAY BE LIABLE. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- (b) IN ADDITION, SUPPLIER SHALL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY LAMAR UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY SUPPLIER PURSUANT TO THE CONTRACT, OR THE USE BY SUPPLIER, OR BY INDEMNITEES AT THE DIRECTION OF SUPPLIER, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR SUCH INFRINGEMENT, LAMAR UNIVERSITY SHALL PROMPTLY NOTIFY SUPPLIER AND SUPPLIER SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, LAMAR UNIVERSITY AGREES TO REASONABLY COOPERATE WITH SUPPLIER. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- (c) The indemnities contained herein shall survive the termination of the Contract for any reason whatsoever.

- 13. NON-DISCLOSURE:** Unless required by law or consented to in writing by Lamar University, no disclosure, description, or other communication of any sort shall be made by Supplier to any third party regarding Lamar University's purchase of goods or services hereunder, or of the details and characteristics thereof. Anything furnished to Supplier by Lamar University pursuant to the Contract, including without limitation, samples, drawings, patterns and materials shall remain the property of Lamar University, shall be held at Supplier's risk, and shall be returned upon completion of the work. No disclosure or reproduction thereof in any form shall be made without Lamar University's prior written consent.
- 14. FORCE MAJEURE:** Neither party hereto will be liable or responsible to the other for any loss or damage, or for any delays or failure to perform, due to causes beyond its reasonable control, including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character ("force majeure occurrence"). In the event of such delay or failure to perform, the period specified for performance hereunder may be extended for a period equal to the time lost by reasons of the delay, or the total Contract may be reduced by the performance (or portions thereof) omitted during such delay. Notwithstanding the foregoing or anything to contrary herein, this provision shall be deemed inapplicable to the extent the goods or services to be provided under the Contract are intended to be provided in response to or during a force majeure occurrence.
- 15. GOVERNING LAW AND VENUE:** Jefferson County, Texas, shall be the proper place of venue for suit on or in respect of the Contract. The Contract and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
- 16. COMPLIANCE WITH LAW:** Supplier 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.
- 17. LAMAR UNIVERSITY PREMISES RULES:** If the Contract requires Supplier's presence on Lamar University's premises or in Lamar University's facilities, Supplier agrees to cause its employees, representatives, agents, or subcontractors (collectively, "Supplier Personnel") to become aware of, fully informed about, and in full compliance with all applicable Lamar University 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.
- 18. ASSIGNMENT OF OVERCHARGE CLAIMS:** Supplier hereby assigns to Lamar University 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.
- 19. AUTHORIZED TO CONDUCT BUSINESS IN TEXAS AND EXECUTE AGREEMENTS:** If Supplier is a corporation or a limited liability company, Supplier 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 Supplier has been duly authorized to act for and bind Supplier.
- 20. PAYMENT OF DEBT OR DELINQUENCY TO THE STATE:** Pursuant to Texas Government Code Sections 2107.008 and 2252.903, Supplier agrees that any payments owing to Supplier under the Contract may be applied directly to any debt or delinquency that Supplier owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.
- 21. NO INDUCEMENT FOR CONTRACT AWARD:** Supplier affirms that it has not given or offered to give, nor does

Supplier 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.

- 22. TAX CERTIFICATION:** If Supplier is a taxable entity as defined by Texas Tax Code Chapter 171 (“Chapter 171”), then Supplier certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, or that Supplier is exempt from the payment of those taxes, or that Supplier is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of contract and, at Lamar University’s sole option, may result in termination of the Contract.
- 23. ANTITRUST CERTIFICATION:** Supplier certifies that neither Supplier nor any firm, corporation, partnership or institution represented by Supplier, 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.
- 24. TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION:** Pursuant to Texas Family Code Section 231.006 relating to child support, Supplier 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.
- 25. DISCLOSURE OF OWNERSHIP INTEREST OR RELATIONSHIP:** Supplier 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 Supplier that is a sole proprietorship, the officers or directors of any Supplier that is a corporation, the partners of any Supplier that is a partnership, the joint venturers of any Supplier that is a joint venture, or the members or managers of any Supplier 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 Lamar University in writing, and (ii) Supplier 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.
- 26. CERTAIN BIDS AND CONTRACTS PROHIBITED:** Supplier 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, Supplier certifies that an award of a contract to Supplier will not violate Texas Government Code Section 2155.006, prohibiting Lamar University 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, Supplier certifies that Supplier 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.
- 27. OCCUPATIONAL SAFETY AND HEALTH COMPLIANCE:** Supplier represents and warrants that all products and services offered to Lamar University 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.
- 28. EQUAL EMPLOYMENT/EQUAL OPPORTUNITY:** Supplier certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action, and that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (a) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (b) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (c) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Supplier understands breach of this certification is a violation of the Equal Opportunity clause. The term “segregated facilities” means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or

otherwise. Supplier further agrees that, except where it has contracts prior to this award with subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Supplier will retain the certifications for each one of its subcontractors in Supplier's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

“NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).”

Supplier understands that the penalty for making false statements regarding the subject matter of this Section is prescribed in 18 U.S.C. 1001.

- 29. EXCLUSION FROM GOVERNMENT CONTRACTING:** Neither Supplier nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from the State of Texas or United States (“U.S.”) federal government procurement or non-procurement programs, or are listed in the System for Award Management (SAM) from Federal Procurement or Non-procurement Programs (<https://www.sam.gov/portal/public/SAM>) issued by the U.S. Government. “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). Supplier will provide immediate written notification to Lamar University if, at any time prior to award, Supplier 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 Lamar University issues this Contract. If it is later determined that Supplier knowingly rendered an erroneous certification, in addition to the other remedies available to Lamar University, Lamar University may terminate this Contract for default by Supplier.
- 30. PREFERENCE TO TEXAS PRODUCTS AND SERVICES:** Supplier covenants and agrees that, as required by Texas Government Code Section 2155.4441, in performing its duties and obligations under the Contract, Supplier shall 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.
- 31. TEXAS HAZARD COMMUNICATION ACT:** Supplier is familiar and in full compliance with the Texas Hazard Communication Act (Texas Health and Safety Code Chapter 502), and will provide either (1) a Material Safety Data Sheet (“MSDS”) for each product Supplier, its employees, agents or subcontractors brings on Lamar University’s premises, or (2) a statement of exemption if the product is not covered by the Texas Hazard Communication Act.
- 32. BEST VALUE PRICING:** The price to be paid by Lamar University shall be that contained in Supplier's quote, bid or proposal, which Supplier warrants to be no higher than Supplier'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 Supplier breaches this warranty, the prices will be reduced to Supplier's current prices on orders by others or, in the alternative, Lamar University may cancel this Contract at its sole option without liability to Supplier.
- 33. OPEN RECORDS:** Supplier is hereby notified that Lamar University strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to disclosure of public information. Lamar University will consider all information, documentation, and other materials requested to be submitted to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the Texas Public Information Act (Texas Government Code Chapter 552). Supplier will be notified of a request for public information that implicates Supplier’s materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General.
- 34. LOSS OF FUNDING:** Performance by Lamar University 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 Lamar University will issue written notice to Supplier and Lamar University may terminate the Contract without further duty or obligation hereunder. Supplier

acknowledges that appropriation, allotment, and allocation of funds are beyond the control of Lamar University.

- 35. ACCESS TO DOCUMENTS:** To the extent applicable to the Contract, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300 et seq., Supplier will allow, during and for a period of not less than four (4) years after the expiration or termination of the Contract, access to (i) the Contract and Supplier's books, documents, and records, and (ii) contracts between Supplier and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services, Federal Emergency Management Agency (FEMA), and their duly authorized representatives.
- 36. LAMAR UNIVERSITY'S RIGHT TO AUDIT:** At any time during the term of the Contract and for a period of four (4) years thereafter, Lamar University or a duly authorized audit representative of Lamar University, The Texas State University System, or the State of Texas, at its expense and at reasonable times, reserves the right to audit Supplier's records and books relevant to all services provided under the Contract. In the event such an audit by Lamar University reveals any errors/overpayments by Lamar University, Supplier shall refund Lamar University the full amount of such overpayments within thirty (30) days of such audit findings, or Lamar University, at its sole option, may deduct such overpayments from any amounts Lamar University is required to pay Supplier under this or any Contract.
- 37. STATE AUDITOR'S OFFICE:** Supplier understands that acceptance of funds under the Contract constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Texas Education Code Sections 51.9335(c), 73.115(c) and 74.008(c). Supplier agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Supplier will include this provision in all contracts with permitted subcontractors.
- 38. NON-WAIVER OF DEFAULTS:** Any failure of Lamar University 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 UNIVERSITY at any time to avail itself of the same.
- 39. 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.
- 40. NOTICES:** Except as otherwise provided by this Section, 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, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) 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, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received, to:

Lamar University:
P.O. Box 10003
Beaumont, TX 77710
Attention: Director of Purchasing

- 41. WARRANTIES:** In addition to all warranties established by law, Supplier 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 Lamar University, and shall be merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. Lamar University shall have the right of inspection and approval, and may, at Supplier'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 Lamar University's failure to notify Supplier 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 Lamar University's drawings or specifications, does not infringe any patent, trademark, service mark, copyright, or other third party intellectual property right.

42. PUBLICITY: Supplier 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 Lamar University's employees or use Lamar University's name in connection with any sales promotion or publicity event without the prior express written approval of Lamar University.

43. PRODUCT RECALL: Supplier shall, immediately upon discovery, advise Lamar University 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 University
P.O. Box 10003
Beaumont, TX 77710
Attention: Director of Purchasing
Tel: 409-880-1783
Fax: 409-880-8247

44. BREACH OF CONTRACT CLAIMS:

- (a) To the extent that Texas Government Code Chapter 2260, as it may be amended from time to time ("Chapter 2260"), is applicable to the Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by Lamar University and Supplier to attempt to resolve any claim for breach of contract made by Supplier:
 - 1. Supplier's claims for breach of the Contract that the parties cannot resolve pursuant to other provisions of the Contract or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Supplier will submit written notice, as required by subchapter B of Chapter 2260, to Lamar University in accordance with the notice provisions herein. Supplier's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to Supplier's claim, the specific provision which Lamar University allegedly breached, the amount of damages Supplier seeks, and the method used to calculate such damages. Compliance by Supplier with subchapter B of Chapter 2260 is a required prerequisite to Supplier's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer of Lamar University, or another officer of Lamar University as may be designated from time to time by Lamar University by written notice to Supplier, will examine Supplier's claim and any counterclaim and negotiate with Supplier in an effort to resolve such claims.
 - 2. If the parties are unable to resolve a dispute by the manner provided above, the contested case process provided in subchapter C of Chapter 2260 is Supplier's sole and exclusive process for seeking a remedy for any and all of Supplier's claims for breach of the Contract by Lamar University.
 - 3. Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Texas Legislature under Texas Civil Practices and Remedies Code Chapter 107. The parties hereto specifically agree that (i) neither the execution of the Contract by Lamar

University nor any other conduct, action or inaction of any representative of Lamar University relating to the Contract constitutes or is intended to constitute a waiver of Lamar University's or the State's sovereign immunity to suit, and (ii) Lamar University has not waived its right to seek redress in the courts.

- (a) The submission, processing and resolution of Supplier's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted, or subsequently amended.
- (b) Lamar University and Supplier agree that any periods set forth in the Contract for notice and cure of defaults are not waived.

45. ACCESS BY INDIVIDUALS WITH DISABILITIES: Supplier represents and warrants ("EIR Accessibility Warranty") that any electronic and information resources and all associated information, documentation, and

support provided to Lamar University by Supplier 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 Supplier becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Supplier represents and warrants that it will, at no cost to Lamar University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty, or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event Supplier is unable to do so, then Lamar University may terminate the Contract without further liability and Supplier will refund to Lamar University all amounts Lamar University has paid under the Contract within thirty (30) days of the termination date.

46. ETHICS MATTERS; NO FINANCIAL INTEREST: Supplier and its employees, agents, representatives and subcontractors have read and understand Lamar University's Conflicts of Interest Policy Neither Supplier nor its employees, agents, representatives or subcontractors will assist or cause Lamar University employees to violate Lamar University's Conflicts of Interest Policy, provisions described by Lamar University's Standards of Conduct Guide, or applicable state ethics laws or rules. Supplier 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.

47. UNDOCUMENTED WORKERS: Supplier understands the federal Immigration and Nationality Act (8 U.S.C. §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 CFR Part 274a). Among other things, Supplier is required to: (1) have all employees complete and sign an I-9 Form certifying that they are eligible for employment; (2) 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; (3) record information about the documents on the I-9 Form and complete the certification portion of the I-9 Form; and (4) 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 Supplier 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, Lamar University may terminate the Contract immediately without further liability. Supplier represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

48. LAMAR UNIVERSITY COMPLIANCE PROGRAM:

Supplier acknowledges that its employees, subcontractors, representatives and/or agents will abide by Lamar University's Vendor Code of Conduct, as well as other compliance policies, and Supplier shall fully adhere to and support the policies set forth therein. Supplier further agrees to abide by, and not violate, nor assist any employee of Lamar University to violate, any of the Texas ethics laws. To the extent applicable, Supplier shall participate in training and education sessions relating to the Compliance Program, which shall include training and education sessions related to 42 U.S.C. § 1320a-7b(b) (the "Anti-Kickback Statute") and 42 U.S.C. § 1395nn (the "Stark Law") as requested by Lamar University. Supplier agrees to, and at all times shall, comply with all laws, rules and regulations impacting Supplier and Lamar University. Any Lamar University policies, including the Compliance Plan and the Vendor Code of Conduct shall be made available to Supplier in electronic or paper format upon request, as Supplier is responsible for acknowledging and adhering to same. To the extent that any actions of Supplier violate the

terms of Lamar University's Vendor Code of Conduct, Lamar University may immediately terminate this Contract for cause.

49. COMPLIANCE WITH LAMAR UNIVERSITY SYSTEM INFORMATION RESOURCES USE AND SECURITY POLICY: Supplier agrees to adhere to all state and federal laws and The Lamar University Board of Regents' Rules and policies pertaining to the protection of Lamar University's Information Resources and privacy of Sensitive Data, as those terms are defined in UTS165. Further, Supplier represents and warrants that it will:

- Hold all Sensitive Data in the strictest confidence;
- Not release any Sensitive Data concerning a Lamar University student unless Supplier obtains Lamar University'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 Lamar University Vendor Access Requirements.

Supplier must provide written notice to Lamar University within one (1) business day of Supplier's discovery of any unauthorized use or disclosure of Sensitive Data, and Supplier shall provide all information requested by Lamar University 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, Lamar University, at its sole cost and expense, shall have the right to audit Supplier's systems to ensure that Information Resources and Sensitive Data are adequately protected.

50. CONFIDENTIALITY AND SAFEGUARDING OF UNIVERSITY RECORDS; PRESS RELEASES.

Under the Contract, Supplier may (1) create, (2) receive from or on behalf of Lamar University, or (3) have access to, records or record systems (collectively, "Lamar University Records"). However, it is expressly agreed that Lamar University will not provide to Supplier, and Supplier will never seek to access, any Lamar University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the Texas Public Information Act, Chapter 552, Texas Government Code, including "directory information" of any student who has opted to prohibit the release of their "directory information" as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA") and its implementing regulations. Supplier represents, warrants, and agrees that it will: (1) hold all Lamar University Records that it does access pursuant to the Contract in strict confidence and will not use or disclose Lamar University Records except as (a) permitted or required by the Contract, (b) required by Applicable Laws, or (c) otherwise authorized by Lamar University in writing; (2) safeguard Lamar University Records according to reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Supplier protects its own confidential information; (3) continually monitor its operations and take any action necessary to ensure that Lamar University Records are safeguarded and the confidentiality of Lamar University Records is maintained in accordance with all Applicable Laws, and (4) comply with Lamar University rules, policies, and procedures regarding access to and use of Lamar University's computer systems. At the request of Lamar University, Supplier agrees to provide Lamar University with a written summary of the procedures Supplier uses to safeguard and maintain the confidentiality of Lamar University Records.

- (a) Notice of Impermissible Use. If an impermissible use or disclosure of any Lamar University Records occurs, Supplier will provide written notice to Lamar University within one (1) business day after Supplier's discovery of that use or disclosure. Supplier will promptly provide Lamar University with all information requested by Lamar University regarding the impermissible use or disclosure.
- (b) Return of Lamar University Records. Supplier agrees that within thirty (30) days after the expiration or termination of the Contract, for any reason, all Lamar University Records created or received from or on behalf of Lamar University will be (i) returned to Lamar University, with no copies retained by Supplier; or (ii) if return is not feasible, destroyed. Twenty (20) days before destruction of any Lamar University Records, Supplier will

provide Lamar University with written notice of Supplier's intent to destroy Lamar University Records. Within five (5) days after destruction, Supplier will confirm to Lamar University in writing the destruction of Lamar University Records.

- (c) Disclosure. If Supplier discloses any Lamar University Records to a subcontractor or agent, Supplier will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Supplier by this Section.
- (d) Press Releases. Except when defined as part of the Scope of Work, Supplier will not make any press releases, public statements, or advertisement referring to the Contract or the engagement of Supplier as an independent contractor of Lamar University in connection with the Contract, or release any information relative to the Contract for publication, advertisement or any other purpose without the prior written approval of Lamar University.
- (e) Termination. In addition to any other termination rights set forth in the Contract and any other rights at law or equity, if Lamar University reasonably determines that Supplier has breached any of the restrictions or obligations set forth in this Section, Lamar University may immediately terminate the Contract without notice or opportunity to cure.
- (f) Duration. The restrictions and obligations under this Section will survive expiration or termination of the Contract for any reason.

51. RIGHT TO PROTECT INFORMATION RESOURCE SECURITY: Lamar University 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 Lamar University's Information Resources against any security vulnerabilities and unauthorized access or abuse. Further, if Supplier will provide maintenance under the Contract, Supplier warrants that upon routine maintenance and/or notification by Lamar University of security vulnerability that such maintenance shall include the installation of operating system and/or application patches and upgrades that will protect Lamar University's Information Resources against any security vulnerabilities and unauthorized access or abuse.

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

53. REMOTE NETWORK ACCESS FOR MAINTENANCE OR REPAIRS: If Supplier will provide maintenance or repair services under the Contract, access to Lamar University's information resources for remote maintenance or repairs by Supplier 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 Lamar University's Information Services Department on behalf of Supplier or other authorized vendors shall be the responsibility of the information resource owner.

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

55. SOFTWARE INDEMNIFICATION: If Supplier will provide any software under the Contract, Supplier warrants that it has the full right to grant this entire license to Lamar University. At Supplier's expense, Supplier shall hold harmless, indemnify, and defend Lamar University against any claim that any software or documentation provided to Lamar University by Supplier 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, Lamar University will: (i) give Supplier prompt written notice of such claim; and (ii) subject to the statutory duty of the Texas Attorney General, allow Supplier to control, and will fully cooperate with Supplier in, the defense against such claim and all related negotiations. In the event such claims are raised against both Lamar University and Supplier, Lamar University may, at its option and expense, retain its own counsel to act as co-counsel in such defense and related negotiations.

Supplier's obligation under this Section is conditioned upon Lamar University's agreement that, if the operation of any software provided by Supplier becomes or, in Supplier's reasonable opinion is likely to become, the subject of such claim, Lamar University shall permit Supplier, at Supplier's option and expense, to either procure the right for Lamar University 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 Supplier is unwilling or unable to procure the right to use the software or replace or modify it as described above, Supplier shall refund to Lamar University any license fees and, if applicable, professional services or installation fees paid to Supplier by Lamar University relating to such software.

- 56. WARRANTY AGAINST SELF DISABLING CODES:** If Supplier will provide any software under the Contract, Supplier warrants that any software it provides shall not be subject to any time-based, activity-based, or event-based self-disabling codes once Supplier has received payment.
- 57. SOFTWARE ACCEPTANCE:** If Supplier will provide any software under the Contract, upon installation of any software by Supplier, Supplier shall demonstrate to Lamar University the operation of the software in Lamar University's test and live environments as performing in accordance with the provided documentation and specifications.
- (a) Acceptance of software shall occur after thirty (30) consecutive calendar days of Stable operation following First Productive Use. At Lamar University's option, the running of the thirty (30) 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 (30) calendar day period, Lamar University shall notify Supplier in writing of Lamar University's acceptance of the software, which notice shall not be unreasonably withheld.
 - (b) "First Productive Use" shall mean seventy-two (72) hours of continuous operation after the date on which the software is first used with Lamar University'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 Lamar University in its sole discretion.
- 58. EXTERNAL TERMS:** If Supplier will provide any software under the Contract, the terms and conditions of the Contract completely supplant, replace, and override all other terms and conditions concerning Supplier's license of software to Lamar University and/or Supplier's provision of any other goods or services to Lamar University under the Contract ("External Terms"). External Terms will have no effect, regardless of whether Lamar University or any person or entity expresses assent or agreement to such External Terms. External Terms include any shrinkwrap, clickwrap, browsewrap, electronic terms and conditions of use displayed via the Internet, or other similar terms and conditions displayed in any form that must be agreed to by Lamar University or any other person or entity in order to access or use the software or any other goods or services provided by Supplier under the Contract.
- 59. HOSTED SERVICES ("CLOUD" SERVICES):** If Supplier will provide any services and/or products to Lamar University related to the information and/or content owned by Lamar University that will not reside on Lamar University-owned servers or systems, Supplier shall complete a Hosted Services Checklist ("Checklist"). Moreover, Supplier shall consult with both Lamar University's Information Services Department and Lamar University's Chief Information Security Officer related to the services or products provided to Lamar University.
- 60. Discrimination Prohibited.** LAMAR UNIVERSITY AND SUPPLIER WILL ABIDE BY THE REQUIREMENTS OF 41 CFR 60-1.4(A), 60-300.5(A) AND 60-741.5(A) (COLLECTIVELY, THE "REGULATIONS"). THE REGULATIONS (1) PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND (2) PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. MOREOVER, THE REGULATIONS REQUIRE THAT LAMAR UNIVERSITY AND SUPPLIER TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT, INDIVIDUALS

WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, PROTECTED VETERAN STATUS OR DISABILITY.

NONDISCRIMINATION: IN THEIR EXECUTION OF THIS AGREEMENT, ALL CONTRACTORS, SUBCONTRACTORS, THEIR RESPECTIVE EMPLOYEES, AND OTHERS ACTING BY OR THROUGH THEM SHALL COMPLY WITH ALL FEDERAL AND STATE POLICIES AND LAWS PROHIBITING DISCRIMINATION, HARASSMENT, AND SEXUAL MISCONDUCT. ANY BREACH OF THIS COVENANT MAY RESULT IN TERMINATION OF THIS AGREEMENT.

61. LIMITATIONS: THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF LAMAR UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON LAMAR UNIVERSITY'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 LAMAR UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.