

MASTER SERVICES AGREEMENT

This Master Service Agreement (this "Agreement") is entered into by and between [blank] a [blank] authorized under the laws of the State of Texas ("Member") and LEARN: Lonestar Education and Research Network ("LEARN") on the date that the last party to execute this Agreement does so (the "Effective Date").

1. DEFINITIONS.

- (a) "Acceptance Criteria" means the Specifications set forth in the applicable Addendum.
- (b) "Addendum" means the Network Services Addendum and/or the Professional Services Addendum.
- (c) "Agreement" means this Agreement and each Statement of Work (SOW), any Service Order, Appendix, or any Addendum, and any other document specifically referenced herein or made a part of this Agreement.
- (d) "Acceptable Use Policy (AUP)" means the LEARN AUP (defined in Section 11) and any other acceptable use policy of any Third-Party Provider, including but not limited to the acceptable use policy applicable to Internet2.
- (e) "Authorized End Users" means staff, faculty, students and their guests who are on Member's Premises and are authorized to use the Services.
- (f) "Completion Date" means the date the Network Services at the last site of the Member's Premises (as described in the applicable Service Order) is "live" and operational.
- (g) "Effective Date" means the date first written above.
- (h) "Equipment" means all equipment, hardware, and tangible property used to provide the Services including but not limited to power distribution panels, cooling fans, vents, racks, and fiber.
- (i) "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety.
- (j) "Fiber Optic Network" means the fiber optic network as designed, installed, implemented, maintained and tested by LEARN for Member pursuant to a Service Order for Network Services.
- (k) "Network Services" means the design, procurement, installation, implementation and testing of a Fiber Optic Network, or other type of network, as more specifically set forth in the applicable Service Order.
- (l) "Network Services Addendum" means the addendum applicable to Network Services, which is made part of this Agreement with respect to Network Services.

- (m) "Personal Data" means information that identifies an individual and is governed by applicable privacy laws, that Member directly or indirectly makes accessible to LEARN and that LEARN collects, holds, stores, transmits, or uses in the course of providing the Services.
 - (n) "Member Premises" means the physical location of Member's facilities where the Services are performed.
 - (o) "Professional Services" means the routine maintenance and support of a Fiber Optic Network, or other type of network after the completion of any Network Services as more specifically set forth in the applicable Service Order.
 - (p) "Professional Services Addendum" means the addendum applicable to Professional Services, which is made part of this Agreement with respect to Professional Services.
 - (q) "Proprietary Information" means any or all rights in the world, whether or not filed or registered or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, other intellectual property rights laws or any other proprietary rights or equivalent rights or form of protection relating to intangible property anywhere in the world.
 - (r) "Service Orders" means the order describing the Network Services or Professional Services to be performed by LEARN which has been executed by the Parties which references this Agreement. A Service Order may be subject to additional terms, including the Network Services or Professional Services Addendum.
 - (s) "Service Start Date" means the date LEARN begins performing Services under a Service Order and/or an applicable SOW.
 - (t) "Services" means Network Services, Professional Services, and any other services performed under this Agreement and/or any applicable SOW or Service Order.
 - (u) "SOW" means a statement of work for the provision of Services other than Professional Services or Network Services. A SOW may be in any form mutually agreed to by LEARN and Member provided it references this Agreement.
 - (v) "Specifications" means the design and implementation details, parameters and criteria set forth in the applicable Service Order.
 - (w) "Third-Party Provider" has the meaning given to such term in Section 10 of this Agreement.
 - (x) "Unauthorized End Users" means anyone other than Authorized End Users.
 - (y) "Upstream Providers" means third parties that LEARN contracts with that have existing fiber optic and network infrastructure (dark fiber, lit fiber, and/or co-location space/power) that is necessary to use in order to provide the Services.
2. SERVICE ORDERS. During the Term of this Agreement, LEARN will provide to Member the Services described in the applicable Service Orders as of the Effective Date or made part of this Agreement after the Effective Date and any applicable SOW(s) the Parties may enter into under this Agreement. The Services may include preliminary Services, the Network Services and, if

applicable, any Professional Services. LEARN may provide Equipment in connection with the Services, subject to the terms and conditions of this Agreement and further subject to the availability and operational limitations of systems, facilities and Equipment. Under no circumstances shall the Services be deemed to include 911 services, or any other emergency services.

3. TERM AND TERMINATION.

- (a) Term. The Term of this Agreement begins on the Effective Date and ends on the later of five (5) years after the Effective Date or the date the last Service Order then in effect expires or is terminated. Service Orders may be extended as more specifically set forth in the applicable Service Order or as mutually agreed to in writing by the Parties.
- (b) Termination for Cause. If either Party commits a material breach of this Agreement, the other Party may terminate this Agreement, and/or the affected SOW or Service Order, if the breaching Party fails to cure the material breach within thirty (30) days of receiving written notice of material breach specifying in reasonable detail the material breach, or if the material breach may not be cured within thirty (30) days, then the breaching party shall have a reasonable amount of time to cure such material breach so long as the breaching party commences with such cure in a prompt manner. Additionally, should either Party: (i) be adjudged or become insolvent; (ii) have any proceedings instituted by or against it in bankruptcy, under insolvency laws, or for the Party's reorganization, receivership, dissolution, or liquidation; (iii) make an assignment for the benefit of creditors or any general arrangement with creditors; or (iv) discontinue business or adopt a resolution calling for same; the other Party may terminate this Agreement for cause upon twenty-four (24) hours written notice. For purposes of this Agreement, failure to pay amounts due, when due is a material breach of this Agreement.
- (c) Early Termination and Early Termination Fees. Unless otherwise specified in the applicable Addendum, with one hundred eighty (180) days prior written notice subject to payment of the Early Termination Fees. In the event Member terminates this Agreement prior to the expiration of the Term, Member shall pay to LEARN the Early Termination Fees specified in the Service Order, or if none are specified, then one hundred percent (100%) of the remaining compensation to be paid under this Agreement as of the date of termination.
- (d) Effect of Termination. Upon termination of this Agreement, LEARN shall have no further obligation to Member for the provision of any Services, may cease to provide such Services immediately upon any termination, and all amounts owed or to be owed under this Agreement shall become immediately due and payable, including any Early Termination Fees. Upon a termination of this Agreement (for any reason), LEARN may remove the Equipment pursuant to Section 6 of this Agreement.

4. FEES AND PAYMENT TERMS.

- (a) Fees. Fees for Services will be as stated in the applicable SOW or as stated in the Service Order (if not stated in an SOW). All fees for Services will be priced and settled in U.S. Dollars.
- (b) Payment Terms. Unless otherwise stated in the applicable Service Order, LEARN will invoice Member in advance and payment of LEARN invoices will be due and payable thirty (30) days from the date of the invoice.

- (c) Taxes. Prices set forth in an applicable SOW are exclusive of and Member will pay all taxes (excluding those on LEARN's net income), surcharges, recovery fees, customs clearances, duties, levies, tariffs, shipping charges and other similar charges (and any associated interest and penalties resulting from Member's failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent Member provides a valid exemption certificate prior to the delivery of Services. To the extent required by law, Member may withhold or deduct any applicable taxes from payments due to LEARN, provided that Member will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty and will furnish LEARN with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that LEARN may claim any applicable credit. Member shall be liable for all such taxes even if not invoiced by LEARN.
- (d) Suspension of Services For Non-Payment. Without limiting LEARN's rights of termination in this Agreement, including pursuant to Section 3(b) above, LEARN may suspend Services without liability or penalty in the event Member fails to pay amount due under this Agreement when they become due. Services will be restored promptly after payment has been made.
5. **ACCEPTANCE**. Services shall be deemed accepted by Member unless (i) Member objects within seven (7) days of the Completion Date for such Service (as determined in the applicable Service Order), and (ii) such objection specifies in reasonable detail the portion of the Services which do not comply with the Acceptance Criteria ("Objection"). Upon receipt of an Objection, all other aspects of the Services shall be deemed accepted except for the portion of the Services set forth in the Objection. If LEARN agrees with the Objection, LEARN shall notify Member and LEARN shall proceed to correct the portion of the Services identified in the Objection in a reasonable timeframe. Upon completion of the re-performance of the Services identified in the Objection, Member shall have three (3) business days to accept or reject the Services. The process outlined above will continue until either the Services are accepted, deemed accepted, or LEARN determines that the Objection is not reasonable or is otherwise outside the scope of the Acceptance Criteria. The Completion Date for such Service shall be the date of the commencement of such Service once LEARN resolves the issue so that the Service complies with the terms of this Agreement.
6. **TITLE TO EQUIPMENT, OTHER FACILITIES, AND WIRING**. All Equipment and other facilities and wiring (including fiber) utilized by LEARN in providing the Services shall remain the property of LEARN (or the applicable Third-Party Provider), and, title to the foregoing shall remain vested in LEARN or the applicable Third-Party Provider throughout the terms of this Agreement and thereafter. LEARN reserves the right to utilize this Equipment, other facilities, and wiring (including fiber) to provide services for other entities not affiliated with Member. LEARN will use reasonable efforts to ensure any services provided to other entities will not interfere or impede service delivery to Member. Upon the termination of this Agreement, or an applicable Addenda, LEARN (or the applicable Third-Party Provider) shall have the right to remove all Equipment from Member's premises.
7. **WARRANTIES**.
- (a) General Representations and Warranties. Each party represents and warrants that it is duly organized, validly existing and in good standing under the laws of the State of Texas and is

duly authorized and in good standing to conduct business in the State of Texas. Each party also represents and warrants that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, that its execution, delivery and performance of this Agreement does not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound, and that the individual executing this Agreement on behalf of such party has been duly authorized to act for and bind such party.

- (b) Service Warranties. LEARN will perform the Services in a good and workmanlike manner consistent with the standards and norms in the industry and in compliance with the Specifications. If the Services are not performed in material compliance with the Specifications, Member must inform LEARN within thirty (30) days of discovering such non-conformity but no more than one hundred twenty (120) days after the completion of the Services providing enough detail for LEARN to be able to evaluate the non-conformity. At LEARN's sole option, LEARN may repair, replace or reperform the applicable Services, or if not reasonably feasible in LEARN's sole discretion, LEARN may refund amounts which directly relate to the non-conforming Services. The foregoing is Member's sole and exclusive remedy for breach of warranty under this Agreement.
- (c) Equipment Warranties. LEARN does not directly warrant any Equipment owned by Upstream Service Providers or otherwise provided by any Third-Party Provider. LEARN shall have no liability or responsibility for the failure of any Equipment owned by Upstream Service Providers or Third-Party Providers unless directly caused by the grossly negligent act or omission of LEARN. To the extent permitted, LEARN will pass through any warranties applicable to the Equipment for the benefit of Member.
- (d) Disclaimer. EXCEPT AS EXPRESSLY SET OUT IN THE AGREEMENT, ALL WARRANTIES, REPRESENTATIONS, OR AGREEMENTS, WITH RESPECT TO THE PROVISION OF SERVICES OR OTHERWISE, WHETHER ORAL OR IN WRITING AND WHETHER EXPRESS OR IMPLIED, EITHER BY OPERATION OF LAW, STATUTE OR OTHERWISE, ARE EXCLUDED TO THE EXTENT PERMITTED BY LAW AND REGULATION. THE SERVICES ARE PROVIDED ON AN AS IS, AS AVAILABLE BASIS, INCLUDING UNSCHEDULED OUTAGES, WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, LEARN EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE EQUIPMENT OR OTHER FACILITIES OR WIRING WILL NOT BE CAPACITY CONSTRAINED, OR THAT THE SERVICES WILL BE ERROR-FREE, SECURE, VIRUS OR MALWARE FREE, OR UNINTERRUPTED. LEARN IS NOT THE MANUFACTURER OF THE EQUIPMENT AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY, PERFORMANCE OR NON-INFRINGEMENT OF THE EQUIPMENT. WITH RESPECT TO LEARN, MEMBER PURCHASES THE DEVICES "AS IS." EQUIPMENT SHALL BE SUBJECT TO ANY WARRANTIES PROVIDED BY THE EQUIPMENT MANUFACTURER, SUBJECT TO ANY LIMITATIONS, INCLUDING BUT NOT LIMITED TO TRANSFERABILITY TO SUBSEQUENT USERS AND/OR PURCHASERS. LEARN FURTHER DISCLAIMS ANY WARRANTY OF QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT OR THAT THE SERVICES OR EQUIPMENT WILL BE ERROR-FREE OR THAT OPERATION OF THE SERVICES OR EQUIPMENT WILL PERFORM UNINTERRUPTED. LEARN IS NOT RESPONSIBLE FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH THE SERVICES, AND LEARN EXERCISES NO CONTROL OVER, AND ACCEPTS NO RESPONSIBILITY FOR, THE CONTENT OF THE INFORMATION PASSING THROUGH ANY OF THE EQUIPMENT, OR OTHER

FACILITIES OR WIRING. LEARN DOES NOT PROVIDE VIRUS OR MALWARE PROTECTION AND DOES NOT PROVIDE ANY FIREWALL OR OTHER SECURITY RELATED SERVICES. LEARN DOES NOT WARRANT THE GENERAL AVAILABILITY OF THE INTERNET.

8. INDEMNIFICATION: To the extent allowable by Texas law, Member shall indemnify, defend and hold harmless LEARN and its affiliates, and officers, directors, employees, and agents of any of them, from and against third-party claims (including claims brought by End Users (defined in Section 17)), damages, losses and expenses, including attorneys' fees, arising out of or resulting from (i) Member's use of any of the Services, (ii) any content transmitted by Member or its Authorized End Users through the Fiber Optic Network, (iii) violation of any AUP or applicable law by Member or its Authorized End Users, and (iv) any claim that Member, Member's Authorized End Users are or have infringed or misappropriated the intellectual property rights of a third party. LEARN must give prompt notice of the claim and shall to the extent requested by Member, at Member's sole cost and expense, provide reasonable assistance with the defense of the claim. Member shall have full and complete control over the defense and settlement of any claim but will not without Indemnitee's written approval enter into a settlement agreement that admits fault on the part of LEARN or requires LEARN to make any payment.
9. LIMITATION ON LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, MEMBER AGREES THAT THE MAXIMUM LIABILITY THAT LEARN AND ANY THIRD-PARTY PROVIDERS SHALL HAVE TO MEMBER UNDER, ARISING OUT OF, OR RELATING TO THIS AGREEMENT SHALL BE THE AMOUNTS PAID BY MEMBER TO LEARN WITH RESPECT TO THE SPECIFIC SERVICES GIVING RISE TO THE CLAIM UNDER THIS AGREEMENT DURING THE PRECEDING 12 MONTHS, AND UNDER NO CIRCUMSTANCES SHALL LEARN OR ANY THIRD-PARTY PROVIDERS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES UNDER, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST REVENUE, INCREASED COSTS, DAMAGE TO REPUTATION, OR OTHERWISE ARISING OUT OF, OR RELATING TO THIS AGREEMENT, EVEN IF LEARN HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. IN ADDITION, UNDER NO CIRCUMSTANCES SHALL LEARN BE RESPONSIBLE OR LIABLE FOR THE ACTIONS OR OMISSIONS OF ANY THIRD-PARTY PROVIDERS. THIS PARAGRAPH 7 SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS ARE BROUGHT IN CONTRACT, TORT, STRICT LIABILITY, STATUTORY THEORY OF RECOVERY, OR OTHERWISE. ANY LEGAL ACTION ARISING IN CONNECTION WITH THIS AGREEMENT MUST BE FILED WITHIN TWO (2) YEARS AFTER THE CAUSE OF ACTION ACCRUES, OR IT WILL BE DEEMED TIME-BARRED AND WAIVED. THE PARTIES WAIVE ANY STATUTE OF LIMITATIONS TO THE CONTRARY.
10. THIRD-PARTY PROVIDERS. Certain Services may be provided subject to the terms of a separate license or other agreement between LEARN and an Upstream Provider, a third-party licensor, a third-party service provider or an equipment or hardware manufacturer ("Third-Party Providers") for the provision of other services, equipment, hardware or licenses ("Third-Party Goods and Services"). Third-Party Goods and Services may be subject to terms and conditions set and required by such Third-Party Providers ("Third-Party Provider Terms"). Member's execution of the applicable SOW and/or Service Order that includes Third-Party Goods and Services is Member's agreement to comply with the terms and conditions of the Third-Party Provider Terms. Unless the applicable SOW expressly specifies otherwise, LEARN's sole responsibility with respect to Third-Party Goods and Services is to place Member's orders for such Third-Party Goods and Services, except that LEARN may invoice and collect payment from Member for the Third-Party Goods and Services. Member shall be fully responsible and liable for complying with any Third-Party Provider Terms, LEARN shall have no liability for any breach of warranty, breach or failure to perform or failure to provide goods and/or services by Third-Party Providers. Member shall indemnify,

defend and hold LEARN harmless from any and all claims, losses, liabilities, penalties, fines or other costs arising out of Member's failure to comply with any Third-Party Provider Terms.

11. ACCEPTABLE USE POLICIES. Member agrees to comply with any LEARN Acceptable Use Policy ("LEARN AUP") which may be in effect from time to time. LEARN may update, remove or amend the LEARN AUP at any time upon providing notice to Member. If applicable, Member further agrees to comply with the Acceptable Use Policy of any Third-Party Provider and for "Internet 2" located here: <https://internet2.edu/community/about-us/policies/internet2-network-acceptable-use-policy-aup/>.
12. ACCESS RIGHT; PERMITS; LICENSES. Member will, in a timely manner, allow LEARN (or the applicable Third-Party Provider) access as reasonably required for the Services to property and equipment that Member controls and will obtain at Member's expense, timely access for LEARN (or the applicable Third-Party Provider) as reasonably required for the Services to property controlled by third parties such as Member's landlord. LEARN will coordinate with and, except in an emergency, obtain Member's consent to enter upon Member's property and premises, which consent shall not be unreasonably withheld. Access rights mean the right to construct, install, repair, maintain, replace and remove access lines and network facilities and the right to use ancillary equipment space within a building for Member's connection to LEARN's network. Member must provide LEARN timely information and access to Member's facilities and equipment as LEARN reasonably requires for the Services, subject to Member's reasonable security policies. Member will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities and other items as LEARN reasonably requires for the Services and will obtain any necessary licenses, permits and consents (including easements and rights-of-way). Member will have the Premises ready for LEARN to perform its work according to a mutually agreed schedule.
13. SAFE WORKING ENVIRONMENT. Member will ensure that the Premises is a safe working environment, free of Hazardous Materials and reasonably suitable for the Services. LEARN shall have no obligation to perform work at a location that is not a suitable and safe working environment or to handle, remove or dispose of Hazardous Materials. If LEARN encounters any Hazardous Materials at Member's Premises, LEARN may terminate the affected Services or may suspend performance until Member removes and remediates the Hazardous Materials at Member's expense in accordance with applicable law.
14. INDEPENDENT CONTRACTOR; SUBCONTRACTORS. LEARN is an independent contractor in connection with the provision of Services to Member under this Agreement, and neither party shall be considered an agent, employee or partner of the other party nor shall the parties be considered to be joint venturers. Neither party shall hold itself out as an agent, employee, or partner of the other party or as a joint venturer with the other party in connection with this Agreement. Neither party shall have authority to make any statement, representations or commitments of any kind, or to take any action which shall be binding on the other party, except that LEARN is permitted to do as authorized elsewhere in this Agreement and either party is permitted to do as to the extent expressly authorized in a separate writing executed by the parties. Member acknowledges that many of the Services provided by LEARN are provided through subcontractors of LEARN. Accordingly, Member hereby consents to the use of subcontractors for the provision of field services (including but not limited to installation, repair, and maintenance of Equipment), field engineers and project managers.
15. SEVERABILITY. If any of the provisions of this Agreement in the application thereof to any person or circumstance, is rendered or declared illegal for any reason, or shall be invalid or

unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

16. DISPUTE RESOLUTION. The parties shall promptly require representatives who have the authority to resolve any dispute between the parties meet with each other in an effort to amicably resolve any dispute before either party terminates this Agreement or files any type of legal or equitable action. Notwithstanding the foregoing, nothing in this Section 10 shall be construed to prohibit or delay any party from seeking injunctive relief or specific performance from a court of competent jurisdiction in order to protect its rights.

17. USE, RESTRICTIONS, SUSPENSION.

- (a) Member shall permit only Authorized End Users to use the Services provided under this Agreement. Any use of the Services by an Unauthorized End User shall be a breach of this Agreement, and, without limiting LEARN's rights and remedies for such breach, Member shall immediately notify LEARN and take all steps necessary to stop such use immediately. Authorized End Users and Unauthorized End Users shall collectively be referred to as "End Users", and Member is responsible for all actions and omissions of each End User, all of which shall be attributable to Member for all purposes under this Agreement.
- (b) Member shall not (i) resell the Services, or license, distribute or otherwise transfer the Services, or the rights to use the Services, to any third-party (but Member may allow Authorized End Users to use the Services as set forth in (a) above), (ii) use the Services in a manner that interferes with use of the Services by other customers or Members of LEARN, (iii) use the Services in violation of any applicable law, rule, or regulation or the rights of any third-party, or (iv) use the Services in a manner that interferes with LEARN's or any Upstream Provider's services, or operation of any Equipment or other facilities or wiring. Without limiting LEARN's other rights and remedies under this Agreement, if Member violates any of the restrictions above, or if LEARN otherwise deems it necessary to do so such as where it is required by law, LEARN may suspend the Services without prior notice.
- (c) LEARN may suspend any or all Services for any of the following reasons: (i) Member's or any End User's violation of any AUP, (ii) any act or omission by Member or any End User that has or could have a material adverse impact to the Services, Equipment, and/or Member's Fiber Optic Network, (iii) suspected or actual fraud or abuse by Member or an End User, (iv) violation of applicable law, including but not limited to privacy laws, by Member or an End User, (v) infringement or misappropriation of a third party intellectual property right by Member or an End User, (vi) upon court order, subpoena or other governmental requirement, and/or (vii) threat of personal injury or death or other emergency situation. LEARN will provide notice to Member as soon as practicable and will restore Services once the reason for suspension has been remedied. LEARN shall have no liability for exercising its rights under this paragraph.

18. CONFIDENTIALITY

- (a) Member and LEARN agree that if either party provides confidential or proprietary information to the other party, including, but not limited to, technical and business information, pricing information, patentable ideas, trade secrets, existing and/or contemplated products and services, software, network schematics and designs, locations of

components of security such as points of presence, hardware and platform utilized, technologies and protocols utilized, research and development, production information, cost information, profit and margin information, finances and financial projections, customers, clients, and current or future business models ("Proprietary Information"), such Proprietary Information shall be held in confidence by the receiving party, and the receiving party shall afford such Proprietary Information the same care and protection as it affords generally to its own confidential and proprietary information (which in any case shall be not less than reasonable care) in order to avoid disclosure to or unauthorized use by any third party. The parties acknowledge and agree that any verbal information disclosed by either party to the other in connection with or pursuant to this Agreement that has not also been submitted in writing by the disclosing party to the receiving party shall be deemed to be Proprietary Information of the disclosing party only if the disclosing party indicates that the verbal information is confidential or proprietary when it provides it to the receiving party and the disclosing party also confirms in writing to the receiving party that the verbal information is confidential or proprietary within 5 days thereafter. All Proprietary Information, unless otherwise specified in writing, shall remain the property of the disclosing party, shall be used by the receiving party only to perform its obligations and exercise its rights under this Agreement, and such written Proprietary Information, including all copies thereof, shall be returned to the disclosing party or destroyed after the receiving party's need for it has expired or upon the request of the disclosing party. Proprietary Information of the disclosing party shall not be reproduced except to the extent necessary for the receiving party to perform its obligations under this Agreement, or as otherwise may be expressly permitted in writing by the disclosing party. The terms of this Agreement, including the pricing-related terms, are the Proprietary Information of LEARN. The mere existence of this Agreement is not confidential.

- (b) The foregoing provisions of this Section shall not apply to any Proprietary Information which (i) at the time disclosed is publicly available other than through the disclosing party; (ii) is required to be disclosed by a governmental or judicial law, order, rule or regulation (subject to clause (c) below); (iii) is independently developed by the receiving party; or (iv) becomes available to the receiving party without restriction from a third party; provided that clauses (iii) and (iv) are not meant to apply to, or in any way limit, Member's obligation to keep the terms of this Agreement confidential.
- (c) Notwithstanding clauses (a) and (b) of this Section, the receiving party may disclose Proprietary Information of the disclosing party to the receiving party's employees, agents, and legal and financial advisors if necessary or appropriate in connection with this Agreement or in obtaining financing, provided that each such person or entity is notified of the confidential and proprietary nature of such Proprietary Information and is subject to or agrees to be bound by similar restrictions on its use and disclosure. In addition, each party is responsible for the actions and omissions of its employees, agents, and legal and financial advisors to whom it provides any of the other party's Proprietary Information as to any uses or disclosures of such Proprietary Information by such employees, agents, and legal and financial providers.
- (d) If the receiving party is required to disclose all or any part of the Proprietary Information of the disclosing party, each party agrees to discuss and work cooperatively, in good faith, with the other party, to protect, to the extent possible, those items or matters which the disclosing party deems confidential and which may, in accordance with applicable laws, be protected from disclosure; including filing, or participating in filing, any documents with the Texas Attorney General to prevent disclosure under the open records laws.

19. **PRIVACY.** Each party is responsible for complying with the privacy laws applicable to its business. LEARN shall require its personnel, agents and contractors who process Member Personal Data to protect Member Personal Data in accordance with the data protection laws and regulations applicable to LEARN's business. If Member does not want LEARN to comprehend Member data to which it may have access in performing Services, Member must encrypt such data so that it will be unintelligible. Member is responsible for obtaining consent from and giving notice to its Authorized Users, employees and agents regarding Member's and LEARN's collection and use of the Authorized User, employee or agent information in connection with a Service. Member will only make accessible or provide Member Personal Data to LEARN when it has the legal authority to do so. Unless otherwise directed by Member in writing, if LEARN designates a dedicated account representative as Member's primary contact with LEARN, Member authorizes that representative to discuss and disclose Member's customer proprietary network information to any employee or agent of Member without a need for further authentication or authorization.
20. **FORCE MAJEURE.** Neither party shall be in breach of this Agreement or otherwise liable if its performance is prevented or delayed as a result of any event or circumstance beyond its reasonable control, including fires, floods, acts of God, acts of terrorism or war, outbreak of diseases or continuation of COVID 19-related issues, strikes, or failure of supply chains. A party invoking this force majeure clause shall promptly notify the other party. This provision does not apply to Member's obligations to pay amounts due or owed for the Services.
21. **NON-SOLICITATION.** Member agrees that for so long as a Service Order is in effect between Member and LEARN and for a period of one (1) year after the termination or expiration of the last Service Order, neither Member nor its affiliates, nor any of their officers, directors, managers, employees, agents and representatives (each a "Member Party") will solicit, directly or indirectly, LEARN's employees, consultants or contractors to terminate or modify such employee's, consultant's or contractor's relationship with LEARN or to employ or engage LEARN's employees, consultants or contractors with a Member Party.
22. **GOVERNING LAW.** With respect to any action under, relating to, or arising out of this Agreement, the parties consent to the exclusive jurisdiction of the courts in Lubbock County, Lubbock Texas, and the parties also agree that venue is proper in and waive any objection to any action being brought in any of these courts. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas, without reference to its laws governing conflicts of law.
23. **THIRD-PARTY BENEFICIARIES.** This Agreement is for the benefit of Member and LEARN and, except for Third-Party Providers, does not provide any third party (including Authorized End Users) the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege. Third-Party Providers are expressly made a third-party beneficiary to this Agreement for purposes of enforcing provisions relating to indemnification and limitation on liability as well as Third-Party Provider Terms against Member.
24. **NOTICES.** Except with respect to invoices as addressed in Section 3, all notices or communications to either party by the other will be delivered personally or sent by U.S. registered or certified mail, postage prepaid, addressed to such party at the following respective addresses for each and will be deemed given on the date personally delivered or deposited in the mail, as applicable, unless otherwise provided herein.

Member: Name
C/O Department of Information Technology
Address
City, ST ZIP
Attn: Name
Telephone: (xxx) xxx-xxxx
Email: name@hello.edu

LEARN: LEARN
1720 Bray Central Drive, Suite 100 LL
McKinney, Texas 75069
Attn: Kerry Mobley, President & CEO
Telephone: (806) 743-7878
Email: contracts@tx-learn.net

25. INSURANCE. LEARN agrees to maintain, at LEARN's sole expense the following insurance coverage in at least the amounts specified:

- (a) Workers Compensation – Statutory Limits;
- (b) Employer's Liability – \$1,000,000 per accident and employee;
- (c) Commercial General Liability (including contractual liability) – \$1,000,000 per occurrence;
- (d) Product/Completed Ops – \$2,000,000 aggregate;
- (e) Auto Liability – \$1,000,000 combined single limit
- (f) Technology Errors & Omissions (including Network Security & Privacy Liability) – \$1,000,000 per occurrence

26. STATE ENTITIES. This Section 26 shall only apply if Member is a state agency, public institution of higher education or other state government entity of the State of Texas.

- a. DISPUTE RESOLUTION. The dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by to attempt to resolve any claim made for breach of contract that cannot be resolved in the ordinary course of business. Each party shall submit written notice of a claim of breach of contract to the other party, who shall examine the claim, make any counterclaim and negotiate with the other in an effort to resolve the claim.
- b. PUBLIC INFORMATION. The Member 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 ("TPIA"), Chapter 552, Texas Government Code. In accordance with Section 552.002 of TPIA and Section 2252.907, Texas Government Code, and at no additional charge to the Member, LEARN will make any information previously created or exchanged with the Member pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by the Member.
- c. LOSS OF FUNDING. If performance by Member under this Agreement is dependent upon the appropriation and allotment of funds by the Texas State Legislature (the

"Legislature"), and if the Legislature fails to appropriate or allot the necessary funds for Member to comply with this Agreement, then Member will promptly issue written notice to LEARN terminating this Agreement upon 90 days advance notice to LEARN, but if any amounts remain owed to LEARN at termination, Member will pay within 30 days after termination.

- d. NON-WAIVER. If a Member is an agency of the State of Texas, nothing in the Agreement waives or relinquishes Member's rights to claim any exemptions, privileges, and immunities as may be provided by law except to the extent, if at all, set forth immediately below : _____.
- e. DEBTS OR DELINQUENCIES. Pursuant to Section 2252.903, Texas Government Code, LEARN agrees that any payments due to LEARN under this Agreement may be applied toward certain debts or delinquencies that LEARN owes the State of Texas.
- f. CHILD SUPPORT. Under Section 231.006, Texas Family Code, LEARN certifies that it is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
- g. ELIGIBILITY CERTIFICATION. Under Section 2155.004, Texas Government Code, LEARN certifies it is not ineligible to enter into this Agreement and acknowledges that this Agreement may be terminated, and payment withheld if this certification is inaccurate.
- h. BUY TEXAS. To the extent applicable with respect to its performance under this Agreement, LEARN agrees to comply with Section 2155.441, Texas Government Code, requiring the purchase of products and materials produced in Texas when they are available at a price, quality, and time comparable to products and materials outside of the state.
- i. STATE AUDITOR'S OFFICE. LEARN understands that acceptance of funds under this Agreement 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 Section 51.9335(c), Texas Education Code. LEARN agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested.
- j. NO FINANCIAL INTEREST. To the best of each party's knowledge, no member of the Board of Regents of the Member has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- k. NO BOYCOTT OF ISRAEL. Pursuant to Section 2270.002, Texas Government Code, LEARN hereby (a) represents that neither it, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of it, boycotts Israel, and (b) except to the extent required or otherwise expressly permitted by applicable federal law, including, without limitation, 50 U.S.C. Section 4607 and 15 C.F.R. Part 760, agrees that neither it, nor any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of it, will boycott Israel during the term of this Agreement. As used in the immediately preceding sentence, the terms "boycotts Israel" and "boycott Israel" shall have the

meaning assigned to the term “boycott Israel” in Section 2270.001, Texas Government Code.

- I. DEBARMENT: LEARN certifies that it and its Principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the 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.

27. MISCELLANEOUS. This Agreement, which includes the Service Orders, any SOW, Appendix, or any Addendum and any other document or terms or conditions referenced herein constitutes the entire agreement between the parties relative to the subject matter and may only be modified or amended by a written agreement signed by both parties. No additional or alternative terms or conditions or any alteration to this Agreement proposed by Member contained or referred to in a purchase order or other form or document submitted to LEARN shall be deemed to apply. Member may not assign this Agreement nor transfer any of its rights or obligations under this Agreement to any third party unless Member receives LEARN’s prior written consent. The failure of a party to enforce any provision of this Agreement or to exercise any rights or remedies under this Agreement will not be construed as a waiver or relinquishment of such party’s right to assert or rely upon any such provision, right or remedy in any other instance. This Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which shall constitute one single agreement between the Parties. A signature delivered by pdf format or facsimile will be considered an original. The provisions of this Agreement that by their nature are continuing shall continue in full force and effect and shall bind the Parties beyond any termination of this Agreement. In the event of a direct conflict between the terms of this Agreement and any SOW or Service Order, the terms of this Agreement shall govern.

ACCEPTED AND AGREED:

**LEARN: LONESTAR EDUCATION AND
RESEARCH NETWORK**

MEMBER

Signature

Kerry Mobley
President & CEO

Date

Signature

Name:
Title:

Date