

## **Partnership Agreement for Noncredit Programs**

This Agreement is entered by and between Texas Tech University, Office of Community Engagement, in Lubbock, TX (“the University”) and the Institute of Reading Development, 5 Commercial Boulevard, Novato, California (“the Institute”) a corporation incorporated in the State of California. The Agreement will extend from the date of signing to December 31, 2018.

### **1. Programs**

The Institute will provide a series of Reading Development Programs (see Attachment A) throughout the Lubbock area (“Service Area”) offered by the University during the summer and fall of 2018 (the “Programs”). The Institute will provide and pay for all materials and instruction for the Programs. Program content will be purely educational, and the Institute and its agents will not engage in any commercial discussion or promotion of products.

### **2. Teaching Sites**

Teaching sites for the Classroom Programs will be located in public schools or other facilities deemed appropriate by the Institute and the University; the University retains authority to reject or approve instructional sites. One set of Classroom Programs will be held on campus at the University. The Institute will arrange for use of off-campus teaching sites, and provide a Certificate of Liability Insurance (see section 10, Insurance), naming each teaching site as an additional insured, as needed.

The Institute will be responsible for all facility costs at off-campus teaching sites for Classroom Programs. The University will provide on-campus facilities. No teaching facilities are required for Distance Programs. This section is subject to TTU scheduling and approval.

### **3. Program Promotion**

The Institute will execute and pay for printing and mailing promotional letters to students and residents in the Program Service Area. The Institute will also print and distribute promotional flyers through the local public and private schools. The University will provide its logo for use in the Program promotional letter, promotional flyers, and promotional website. All promotional content is to be approved by the University prior to public release. The University retains the right to review/approve/reject all content used in association with its name or logo.

### **4. Scholarships**

The Institute shall promote and subsidize a scholarship program designed to reach students who do not have the financial resources to participate in the program. The tuition charged to these students will not exceed \$99.00. Faculty or staff at the University may enroll immediate family members for \$239.00. The Institute shall submit a summary of subsidized enrollments (scholarship and faculty or staff enrollments) to the University at the end of the session.

**5. Registration**

The Institute will provide registration services for all Programs offered through the University in its service area. The Institute will adhere to the University's registration and refund policies, and final determination of partial and full refunds shall be made by the University.

**6. Tuition, Materials Fees, and Fee Split**

The tuition is \$249.00 per person for Classroom Programs for 4-year-olds and entering kindergartners. The tuition is \$299.00 per person for all other Classroom Programs. The tuition is \$190.00 per person for Summer Distance Programs for 4-year-olds through entering third graders, and \$200.00 per person for all other Summer Distance Programs. The tuition is \$179.00 per person for School Year Distance Programs that include synchronous video instruction. The fee split on all Programs will be 90/10, with 90% of the gross tuition income retained by the Institute. The Institute shall charge fees for books and materials required for participation in the Reading Development Programs, and also for optional post-course books and materials, which shall be retained by the Institute. Within 90 days of the completion of the summer sessions, the Institute will conduct program audits on Summer Classroom and Summer Distance Programs. By December 15th, the Institute will conduct program audits on School Year Classroom and School Year Distance Programs. Following completion of the audits, the Institute will remit 10% of the gross tuition revenues to the University. Subsidized students (scholarship and faculty or staff enrollments as described in section 4) will not be part of the fee split calculations.

**7. Program Administration**

The Institute will notify the University in advance of any changes of publicized dates, times, or location of the programs, and the Institute will be responsible for sending notice of these changes or cancellations to registered participants. The Institute will provide the University with copies of all participant class rosters. Program evaluation results will be submitted, in electronic form, to the University at the conclusion of each series of programs.

**8. Quality Control**

The University may appoint representatives to provide oversight of all aspects of Program implementation.

**9. Compliance**

The parties agree that each shall be separately responsible for compliance with all state and federal laws, including rules, equal employment opportunity, immigration, and nondiscrimination laws which may be applicable to their respective activities under their agreement. The Institute will secure a criminal record background check for each instructor.

**10. Insurance**

The Institute warrants that it maintains an appropriate policy of general liability insurance covering the services performed under this agreement. Coverage will be provided until all obligations under this contract are satisfied.

Institute shall provide a Certificate of Liability Insurance (for \$1,000,000 each occurrence, \$2,000,000 general aggregate, and \$9,000,000 gross liability), naming the University or any off-campus teaching site as an additional insured, upon written request from the University or from any off-campus facility lessor.

**11. Indemnification**

Each party shall be responsible for the consequences of any act or failure to act on the part of itself, its employees and agents. Accordingly, each party shall be held responsible for its own sole negligence, and each party shall indemnify and hold the other parties harmless from any loss which results therefrom. No party hereto shall assume any responsibility to any other party for the consequences of any act or failure to act of any person, firm or corporation not a party to the Agreement. This entire clause, or portions thereof, is enforceable only to the extent allowed, and not otherwise prohibited, by Texas Law.

**12. Dispute Resolution**

In the event that a dispute occurs between the parties with regard to the rights or duties created by this Agreement, or in the event of a breach of this Agreement by either party, the parties hereto agree to meet and confer in good faith in an effort to resolve the dispute or issue.

For any dispute not resolved informally during ordinary course of business, the parties shall utilize the Dispute Resolution process provided for in Texas Government Code 2260 for all disputes arising from this agreement. Neither the execution of this Agreement by Texas Tech University nor any other conduct of any representative of Texas Tech University relating to the contract shall be considered a waiver of Texas Tech University's sovereign immunity to suit.

**13. Institute's Status**

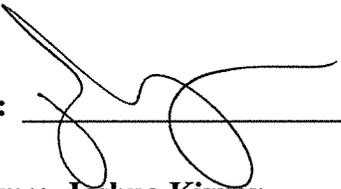
The Institute acknowledges that its instructors for this Agreement are not employed by the University, and thus are not eligible for, nor covered by, any of the University employee benefits, workers' compensation, or employer contributions to Social Security or unemployment insurance.

The Institute acknowledges that it has no authority to bind the University to any contracts or legal obligations.

By signing below the parties agree to the terms set forth above.

**Institute of Reading Development**

**for and on behalf of  
Texas Tech University**

By:  \_\_\_\_\_

**Name: Joshua Kizner**

**Title: Chief Operating Officer &  
Director of Partner Relations**

**Signature:** 

**Email:** jennifer.adling@ttu.edu

**Title:** Managing Director of Procurement Services

**Date:** 10/24/17

**Date:** Jan 10, 2018

## Attachment A:

**Reading Development Programs****Summer Classroom Programs**

All reading classes meet once a week for five weeks.

<b>Program</b>	<b>Class Length</b>	<b>Max. class size</b>	<b>Homework</b>	<b>Program Goals</b>	<b>Tuition</b>
4-year-olds and entering Kindergartners (Parent attendance required)	1 hour	18	20-30 min. 4 x each week (with parent)	Beginning Phonics Sight Words Reading simple words & short sentences Love of Books & Reading	\$249
Entering 1 <sup>st</sup> graders (Parent attends first 45 min of each class)	1 hour and 45 minutes	18	30-45 min. 4x each week (with some parental assistance)	Phonics Sight Words Independent Reading Love of Books & Reading	\$299
Entering 2 <sup>nd</sup> graders	1 hour and 45 minutes	18	30-45 min. 4x each week (with some parental assistance)	Phonics and Word Attack Fluency Comprehension Independent Reading	\$299
Entering 3 <sup>rd</sup> graders	1 hour and 45 minutes	20	45 min. 4x each week (with some parental assistance)	Long-Word Decoding Fluency Comprehension Independent Reading	\$299
Entering 4 <sup>th</sup> graders	2 hours	22	45 min. - 1 hr 4x each week	Comprehension Long-Word Decoding Fluency Independent Reading	\$299
Entering 5 <sup>th</sup> graders	2 hours	22	45 min. - 1 hr 4x each week	Comprehension Long-Word Decoding Fluency Independent Reading	\$299
Entering 6 <sup>th</sup> , 7 <sup>th</sup> , and 8 <sup>th</sup> graders	2 hours	28	1 hr 4x each week	Reading Speed Comprehension Study Skills Enjoy Reading More	\$299
Entering 9 <sup>th</sup> , 10 <sup>th</sup> , and 11 <sup>th</sup> graders	2 hours	30	1 hr 4x each week	Reading Speed Comprehension Study Skills Enjoy Reading More	\$299
Entering 12 <sup>th</sup> graders, college students, and adults	2 hours	30	1 hr 4x each week	Reading Speed Comprehension Study Skills Enjoy Reading More	\$299

## Summer Distance Programs (Asynchronous)

Asynchronous programs include online instruction, independent reading, and skills practice. Students complete 18-24 lessons, typically over 6-12 weeks, with support from an instructor.

<b>Age Group</b>	<b>Program Goals</b>	<b>Instruction and Activities</b>	<b>Tuition</b>
4-year-olds and entering Kindergartners	<ul style="list-style-type: none"> <li>• Learn beginning phonics</li> <li>• Learn sight words</li> <li>• Learn to read simple words and short sentences</li> <li>• Develop love of books and reading</li> </ul>	<ul style="list-style-type: none"> <li>• Phonemic awareness, letter recognition (uppercase and lowercase), letter-sound matching, and blending words</li> <li>• Sight words</li> <li>• Phonics reader and picture book read-aloud</li> <li>• Enrichment activities</li> </ul>	\$190
Entering 1 <sup>st</sup> Graders	<ul style="list-style-type: none"> <li>• Learn phonics</li> <li>• Learn sight words</li> <li>• Learn to read independently</li> <li>• Develop love of reading</li> </ul>	<ul style="list-style-type: none"> <li>• Phonics</li> <li>• Sight words</li> <li>• Comprehension activities</li> <li>• Independent reading</li> </ul>	\$190
Entering 2 <sup>nd</sup> Graders	<ul style="list-style-type: none"> <li>• Learn phonics and word-attack skills</li> <li>• Develop fluency</li> <li>• Build comprehension</li> <li>• Become an independent reader</li> <li>• Develop love of reading</li> </ul>	<ul style="list-style-type: none"> <li>• Phonics and word-attack skills</li> <li>• Independent reading</li> <li>• Fluency training</li> <li>• Comprehension activities</li> </ul>	\$190
Entering 3 <sup>rd</sup> Graders	<ul style="list-style-type: none"> <li>• Become a strong independent reader</li> <li>• Develop fluency</li> <li>• Build comprehension</li> <li>• Learn long-word decoding skills</li> <li>• Develop love of reading</li> </ul>	<ul style="list-style-type: none"> <li>• Long-word decoding</li> <li>• Fluency training</li> <li>• Comprehension activities</li> <li>• Independent reading</li> </ul>	\$190
Entering 4 <sup>th</sup> and 5 <sup>th</sup> Graders	<ul style="list-style-type: none"> <li>• Become a strong, enthusiastic reader</li> <li>• Improve comprehension</li> <li>• Build long-word decoding skills</li> <li>• Read more fluently and rapidly</li> </ul>	<ul style="list-style-type: none"> <li>• Independent reading</li> <li>• Comprehension activities</li> <li>• Long-word decoding</li> </ul>	\$200
Entering 6 <sup>th</sup> – 8 <sup>th</sup> Graders	<ul style="list-style-type: none"> <li>• Increase reading speed</li> <li>• Improve comprehension</li> <li>• Learn study skills</li> <li>• Enjoy reading more</li> </ul>	<ul style="list-style-type: none"> <li>• Independent reading</li> <li>• Reading speed practice</li> <li>• Comprehension activities</li> <li>• Textbook reading and note-taking activities</li> </ul>	\$200
Entering 9 <sup>th</sup> – 12 <sup>th</sup> Graders	<ul style="list-style-type: none"> <li>• Increase reading speed</li> <li>• Improve comprehension</li> <li>• Learn study skills</li> <li>• Enjoy reading more</li> </ul>	<ul style="list-style-type: none"> <li>• Independent reading</li> <li>• Reading speed practice</li> <li>• Comprehension activities</li> <li>• Textbook reading and note-taking activities</li> </ul>	\$200

## School Year Distance Programs (Synchronous)

Synchronous literature programs involve weekly online classes (1 hour each) and independent reading. Students enrolled in a semester-long literature program attend a synchronous online class once a week for 10-12 weeks.

Age Group	Max. class size	Materials	Homework	Program Goals	Tuition
4-year-olds and Kindergartners	16	10 books per semester	15-20 min. 4 x each week (with parental supervision)	<ul style="list-style-type: none"> <li>Foster a lifetime love of reading by helping children engage with meaning in literature</li> <li>Develop reading, speaking, &amp; listening skills.</li> </ul>	\$179
1 <sup>st</sup> graders	16	10 books per semester.	15-20 min. 4 x each week (with parental supervision)	<ul style="list-style-type: none"> <li>Foster a lifetime love of reading by helping children engage with meaning in literature</li> <li>Develop reading, speaking, &amp; listening skills.</li> </ul>	\$179
2 <sup>nd</sup> graders	18	10 books per semester.	15-20 min. 4 x each week (with parental supervision)	<ul style="list-style-type: none"> <li>Foster a lifetime love of reading by helping children engage with meaning in literature</li> <li>Develop reading, speaking, &amp; listening skills.</li> </ul>	\$179
3 <sup>rd</sup> graders	18	4 - 6 books per semester.	15-20 min. 4 x each week (with parental supervision)	<ul style="list-style-type: none"> <li>Foster a lifetime love of reading by helping children engage with meaning in literature</li> <li>Develop reading, speaking, &amp; listening skills.</li> </ul>	\$179
4 <sup>th</sup> graders	20	4 books per semester	20-25 min. 4x each week (with parental supervision)	<ul style="list-style-type: none"> <li>Foster a lifetime love of reading by helping children engage with meaning in literature</li> <li>Develop reading, speaking, &amp; listening skills.</li> </ul>	\$179
5 <sup>th</sup> graders	20	4 books per semester	20-30 min. 4x each week	<ul style="list-style-type: none"> <li>Foster a lifetime love of reading by helping children engage with meaning in literature</li> <li>Develop reading, speaking, &amp; listening skills.</li> </ul>	\$179
6 <sup>th</sup> graders	20	3-4 books per semester	15-20 min. 4x each week	<ul style="list-style-type: none"> <li>Foster a lifetime love of reading by helping children engage with meaning in literature</li> <li>Develop reading, speaking, &amp; listening skills.</li> </ul>	\$179
7 <sup>th</sup> graders	20	3 books per semester	15-20 min. 4x each week	<ul style="list-style-type: none"> <li>Foster a lifetime love of reading by helping children engage with meaning in literature</li> <li>Develop reading, speaking, &amp; listening skills.</li> </ul>	\$179
8 <sup>th</sup> graders	20	3-4 books per semester	15-20 min. 4x each week	<ul style="list-style-type: none"> <li>Foster a lifetime love of reading by helping children engage with meaning in literature</li> <li>Develop reading, speaking, &amp; listening skills.</li> </ul>	\$179
9 <sup>th</sup> graders	20	3-4 books per semester	15-20 min. 4x each week	<ul style="list-style-type: none"> <li>Foster a lifetime love of reading by helping children engage with meaning in literature</li> <li>Develop reading, speaking, &amp; listening skills.</li> </ul>	\$179
10 <sup>th</sup> and 11 <sup>th</sup> graders	20	3-4 books per semester	15-20 min. 4x each week	<ul style="list-style-type: none"> <li>Foster a lifetime love of reading by helping children engage with meaning in literature</li> <li>Develop reading, speaking, &amp; listening skills.</li> </ul>	\$179

**ADDENDUM**  
**To Partnership Agreement for Noncredit Programs**  
**between**  
**TTU and Institute of Reading Development**

This Addendum is incorporated into and forms a part of the attached Institute of Reading Development's Partnership Agreement for Noncredit Programs ("Contractor Terms"). Together these documents form the Contract. "TTU" means Texas Tech University and "Contractor" means Institute of Reading Development. In addition, and to the extent they do not conflict with the terms in this Addendum, the TTU purchase order terms and conditions will apply to all purchases of goods and services by TTU and are incorporated by reference into this Addendum. They are found at <https://www.depts.ttu.edu/procurement/FormRepository/Purchase-Order-terms-and-conditions.pdf>.

**Notwithstanding any express provision stating that the terms of the Contractor Terms will control in the event of conflict, Contractor's signature to this Addendum acknowledges that the Addendum is controlling in the event of a conflict of terms in the Contract.**

1. **Representations and Warranties by Contractor.** Contractor represents and warrants 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 approvals to execute the Contract, and the individual executing the Contract on behalf of Contractor has been duly authorized to act for and bind Contractor.
2. **Additional fees.** Any reference to payment or reimbursement of additional, future, or undefined Contractor fees in the Contract (e.g. travel expenses) is agreed to only if pre-approved by TTU in writing prior to invoicing.
3. **Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code* ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
4. **Tax exempt.** TTU, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* ("TAC") Section 3.322.
5. **Payments.** So long as Contractor has provided TTU with its current and accurate Federal Tax Identification Number in writing, TTU will pay Contractor for goods and services in accordance with Chapter 2251, *Texas Government Code*.
6. **Loss of Funding.** Performance by TTU under the Contract may be dependent upon the appropriation of funds by the Texas State Legislature ("Legislature") and/or allocation of funds by the Board of Regents of the Texas Tech University System ("TTU Regents"). If the Legislature fails to appropriate the necessary funds, or the TTU Regents fails to allocate the necessary funds, then TTU will issue written notice to Contractor and TTU may terminate this Contract without further duty or obligation hereunder, other than payment for goods and services already delivered or provided to TTU. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of TTU.
7. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under the Contract may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
8. **Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of the Contract or payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.
9. **Early Termination.** TTU may terminate the Contract for any reason by providing Contractor with 10 days

prior notice. Despite anything in the Contractor Terms to the contrary, in no event will termination give rise to any liability on TTU's part including, but not limited to, Contractor's claims for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing. TTU's sole obligation hereunder is to pay Contractor for services received prior to the date of termination.

10. **Texas Public Information Act.** All information, documentation and other material submitted by Contractor for and under this Contract are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552). Contractor is hereby notified that TTU strictly adheres to this statute and the interpretations thereof rendered by the Courts and the Texas Attorney General. TTU will use its best efforts to maintain the confidentiality of all Contractor submitted information except where TTU is required to disclose it under the Act. The Texas Attorney General will ultimately decide whether Contractor proprietary information is released to the public, however TTU will give Contractor notice of all requests for its proprietary information in accordance with the Act. TTU cannot represent Contractor interests to the Texas Attorney General and Contractor seeking to protect their proprietary information will be required to submit a letter, brief, or memorandum to the Attorney General with reasons in support of withholding their information.
11. **Publicity and Marks.** Contractor agrees that it will not publicize this Contract or disclose, confirm or deny any details of this Contract to third parties, or use TTU's name or protected marks without TTU's prior express written approval.
12. **Notices.** All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Contract to TTU will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

Contracting  
Procurement Services  
Texas Tech University  
Drane Hall  
15<sup>th</sup> Street and University  
Avenue, Room 347  
Lubbock, Texas 79409  
[contracting@ttu.edu](mailto:contracting@ttu.edu)

or such other person or address as may be given in writing by TTU to Contractor.

Notwithstanding any other requirements for notices given by a party under the Contract, if Contractor intends to deliver written notice to TTU pursuant to Section 2251.054, *Texas Government Code*, then Contractor will send that notice to TTU as follows:

Contracting  
Procurement Services  
Texas Tech University  
PO Box 41094  
Lubbock, Texas 79409

13. **Venue; Governing Law.** Lubbock County, Texas, will be the proper place of venue for any legal action or proceeding arising out of this Contract or enforcement of any provision in this Contract. This Contract and all of the rights and obligations of the parties hereto and any claims arising from this Contract will be construed, interpreted, and governed by the laws of the State of Texas.
14. **Limitation on TTU's Liability.** It is understood and agreed that TTU will not be liable for any negligent or wrongful acts, either of commission or omission, chargeable to it unless such liability is imposed by Texas law and that this Contract shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by TTU to Contractor or to any third party.

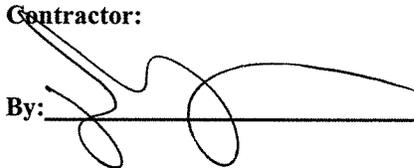
15. **Indemnification.** The Contractor agrees to indemnify, defend, and hold harmless TTU, Texas Tech University System, and its respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents, against any and all liability, claims, suits, losses, costs and legal fees caused by, arising out of, or resulting from any negligent act or omission of the Contractor in the performance or failure to perform within the Contract including the negligent acts or omission of any Subcontractor or any direct or indirect employees of the Contractor or Subcontractors. The indemnification obligations set forth in the Contract shall survive termination or expiration of the Contract.
16. **Force Majeure.** "Event of Force Majeure" means an event beyond the control of Contractor or TTU (each a "Party") which prevents a Party from complying with any of its obligations under this Contract, including but not limited to: act of God (such as, but not limited to fire, explosion, earthquake, or tornado); war, invasion, act of foreign enemies, or embargo; rebellion, revolution, or insurrection; contamination or destruction from any nuclear event; or acts or threats of terrorism. Neither Party will be considered in breach of this Contract to the extent that performance of their respective obligations is prevented by an Event of Force Majeure that arises during the term. The Party (the "Affected Party") prevented from carrying out its obligations hereunder will give notice to the other Party of an Event of Force Majeure upon it being foreseen by, or becoming known to, the affected Party. If and to the extent that a Party is prevented from executing its obligations by the Event of Force Majeure, the Party will endeavor to continue to perform its obligations under the Contract only so far as reasonably practicable.
17. **Insurance.** Contractor agrees that TTU, as an agency of the state of Texas, may self fund against general liability risk and that any Contractor requirements for TTU to carry insurance are waived. The Texas Tort Claims Act governs relief with respect to property damage, personal injury and death proximately caused by the wrongful act or omission of a TTU employee acting within the scope of employment.
18. **Breach of Contract Claims.** The dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260 will be used by TTU and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of TTU will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Contract by TTU nor any other conduct, action or inaction of any representative of TTU relating to the Contract constitutes or is intended to constitute a waiver of TTU's or the state's sovereign immunity to suit; and (ii) TTU has not waived its right to seek redress in the courts. Any term or provision in the Contractor Terms indicating agreement to arbitration, other alternative dispute resolution, or litigation options in the event of a dispute between the parties is expressly rejected and is null and void.
19. **Assignment.** Neither this Contract, nor any rights or obligations of monies due hereunder are assignable or transferable (as security for advances or otherwise) unless TTU agrees in writing. Contractor will not assign or sub award any portion of services encompassed by a Contract without TTU's prior written approval, which will not be unreasonably withheld. TTU will not recognize any assignment or sub agreement made without TTU's prior written approval, and any such assignment by Contractor will be wholly void and ineffective for all purposes unless made in conformity with this section.
20. **Entire Contract; Modifications.** The Contract supersedes all prior agreements, written or oral, between Contractor and TTU and will constitute the entire Contract and understanding between the parties with respect to the subject matter hereof. The Contract and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except in writing signed by TTU and Contractor.
21. **FERPA.** If given access to the personally identifiable information about any student during performance of the services, Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from student records as set forth in The Family Educational Rights and Privacy Act ("FERPA") 34 CFR, §99.3. Contractor agrees that it may create, receive from or on behalf of TTU, or have access to, records or record systems that are subject to FERPA (collectively, the "FERPA Records"). To the extent that Contractor has access to "education records" under the Contract, it is deemed a "school official," as each of these terms are defined under FERPA. Contractor represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Contract, (b) required by law, or (c) otherwise authorized by Institution in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; and (3) continually monitor its operations and take any action necessary to assure that the FERPA

Records are safeguarded in accordance with the terms of this Contract. At the request of TTU, Contractor agrees to provide TTU with a written summary of the procedures Contractor uses to safeguard the FERPA Records. Contractor will indemnify and hold harmless TTU from and against all claims, actions and proceedings resulting from Contractor's or its subcontractor's or affiliate's breach of any obligations under this paragraph.

22. **Required Posting.** Contractor acknowledges and agrees that TTU is required to post certain contracts and documents relating to contract solicitations under Texas Government Code §§2054.067 and 2261.253.
23. **Audit.** Contractor understands that acceptance of funds under the Contract constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency, TTU, or any of its components (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Further, TTU has the right, at TTU's sole cost, to audit Contractor's financial records pertaining to the Contract for the preceding 12-month period either using TTU's personnel or an independent third party. TTU will complete such audit at Contractor's office, on reasonable advance notice, and on dates and times mutually agreed to by the parties. If the audit reveals Contractor owes TTU money, Contractor will pay the amount due within 30 days of the date TTU notifies Contractor of the audit results. If the audit reveals TTU owes Contractor money, TTU will pay Contractor within 30 days of the date the audit is complete.
24. **Independent Contractor.** Contractor agrees that it is an independent contractor and that this Contract does not form a joint venture or partnership. TTU will not be responsible for the Federal Insurance Contribution Act (FICA) payments, federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will TTU furnish any medical or retirement benefits or any paid vacation or sick leave. Contractor is responsible for conduct of business operation, including employee salaries, travel, etc.
25. **Not Exclusive.** Contractor acknowledges and agrees that the Contract with TTU is non-exclusive and TTU has the right to engage with other contractors for similar or identical scopes of work, and to purchase similar or identical products or services from other contractors. Any term or provision in the Contractor Terms indicating the Contract is exclusive is expressly rejected and is null and void.
26. **Contract Amendments.** No modification or amendment to this Contract will become valid unless agreed to by TTU in writing and signed by both parties. All correspondence regarding modifications or amendments to the Contract must be forwarded to the TTU Office of Procurement Services for prior review and approval. Only the Managing Director of Procurement Services or his/her designee will be authorized to process changes or amendments. All amendments must be signed by the same person who signed this original Contract or their successor(s).
27. **Limitations.** **THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF TTU (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS, INCLUDING TERMS AND CONDITIONS (IF ANY) RELATING TO LIENS ON TTU'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF TTU'S 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; ANY PROVISION THAT CREATES AN UNKNOWN OR UNFUNDED LIABILITY; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON TTU EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.**
28. **Contractor Certification.** Contractor certifies this Contract is not prohibited under Tex. Gov't Code §2261.252(b) and agrees that if Contractor's certification is or becomes untrue, this Contract is void, and Contractor will not seek and waives its right to seek any legal or equitable remedy for past or future performance under this Contract, including damages, whether under breach of contract, unjust enrichment, or any other legal theory; specific performance; and injunctive relief.

29. **No Boycott.** Pursuant to Texas Gov't Code Section 2270.001, Contractor affirmatively states that it does not boycott Israel. Additionally, Contractor shall not engage in a boycott of Israel during the term of the Contract.
30. **American Steel.** To the extent the Contract awarded relates to a project as defined Tex. Gov't Code §2252.201(5) (a project to construct, remodel, or alter a building, structure, or infrastructure; to supply material for such a project; or to finance, refinance, or provide funds for such a project), and no exemption in Tex. Gov't Code §2252.203 applies, any iron or steel product produced through a manufacturing process and used in the project that is the subject of the Contract must be produced in the United States (as defined in Tex. Gov't Code §2252.201(4)).

**Contractor:**

**By:** 

**Name:** Joshua Kizner

**Title:** Chief Operating Officer

**Date:** 1/9/2018

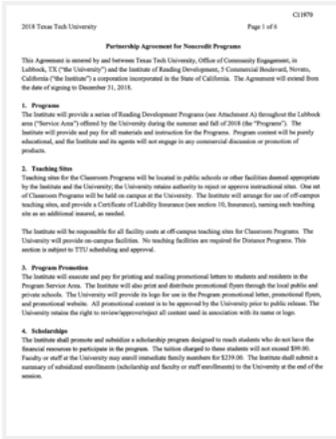
**TTU:**

**Signature:** 

**Email:** jennifer.adling@ttu.edu

**Title:** Managing Director of Procurement Services

**Date:** Jan 10, 2018



# Institute of Reading Development #C11970 signed

Adobe Sign Document History

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