

# (SAMPLE AGREEMENT)

## AGREEMENT TO PROVIDE CUSTODIAL SERVICES

This Agreement to Provide Custodial Services (this “**Agreement**”) is made and entered into effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Effective Date**”), by and between **THE UNIVERSITY OF TEXAS** \_\_\_\_\_, an agency and institution of higher education authorized under the laws of the State of Texas (“**University**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Contractor**”), Federal Tax Identification Number \_\_\_\_\_.

In consideration of the mutual promises and covenants contained in this Agreement, University and Contractor agree as follows:

1. **TERM** – The term of this Agreement will begin on the Effective Date and expire \_\_\_\_\_, 20\_\_\_\_. University will have the option to renew this Agreement for \_\_\_\_\_ (\_\_\_\_) additional \_\_\_\_ (\_\_\_\_) year terms.
2. **TRANSITION PERIOD** – Contractor agrees that if this Agreement expires or is terminated for any reason, then, at University’s option, Contractor will continue to perform the Custodial Services (ref. **Section 3**) in accordance with the terms and conditions of this Agreement until University contracts with a new qualified and experienced contractor(s) to perform the Custodial Services or is able to perform the Custodial Services in-house; provided, that, Contractor will not be required to continue performing the Custodial Services for more than \_\_\_\_\_ (\_\_\_\_) four (4) months after expiration or termination of this Agreement.

Contractor will cooperate with, and assist, University’s efforts to transition to another contractor(s) or to perform the Custodial Services in-house.

3. **STATEMENT OF WORK** – Contractor agrees to perform the cleaning and maintenance services, including furnishing of personnel, equipment, materials and supplies, and other duties and obligations (collectively, “**Custodial Services**”) all as more particularly described in this Agreement and **SCHEDULE 1 Statement of Work** for Custodial Services (“**Statement of Work**”) attached and incorporated for all purposes.

Upon execution of this Agreement, all services previously performed by Contractor on behalf of University and included in the description of the Custodial Services, will become a part of the Custodial Services and will be subject to the terms and conditions of this Agreement.

4. **SERVICE AREAS** – The Custodial Services will be performed at various locations on University’s premises designated in (collectively, "**Service Areas**") in accordance with the schedule specified in the Statement of Work.

After 60 days advance written notice to Contractor, University may add additional areas or facilities to the Service Areas. The pricing for and the schedule for performance of the Custodial Services for any added areas or facilities will be mutually agreed upon by University and Contractor through an amendment to this Agreement.

5. **PERMITS AND LICENSES** – Contractor will obtain and keep in effect all necessary permits, licenses and notices required for its performance under this Agreement, and will post or display in a prominent place the permits, licenses and notices as required by Applicable Laws (ref. **Section 27**).

6. **STANDARD OF PERFORMANCE** – Contractor agrees to use its best efforts, skill, diligence, judgment and abilities to perform the Custodial Services in accordance with the standards specified in this Agreement, **SCHEDULE 1 Statement of Work Custodial Services**, **SCHEDULE 2 Statement of Work Grounds Maintenance Services** and **Attachment A to SCHEDULE 1 Statement of Work**, the highest standards of Contractor’s business, and all Applicable Laws.

7. **QUALITY CONTROL** – University desires to keep the Service Areas in an optimum state of cleanliness. Contractor will permit inspection of its operations at any time by University to determine that University’s standards of quality and cleanliness are being met. In addition, a monthly inspection of the Service Areas will be performed by University's Facilities Manager or it’s designated representative, to ensure compliance with this Agreement. University will consider the result of these inspections when evaluating whether to execute any renewal option(s) for this Agreement.

8. **SAFETY STANDARDS** – Acceptable safety standards will be followed by Contractor to assure safety for their staff as well as University staff, visitors, patients, employees, and students. University will provide initial orientation and routine continuing education to Contractor’s staff on safety issues and biohazard disposal.

9. **PRICING AND PAYMENT** – Upon satisfactory and complete performance of the Custodial Services, University will pay Contractor an annual amount of \$ \_\_\_\_\_, disbursed in twelve (12) monthly payments of \$ \_\_\_\_\_.

10. **PAYMENT TERMS** –

10.1 At the end of each \_\_\_\_\_ calendar month during the term of this Agreement, Contractor will submit to University an invoice (each a "**Progress Payment**") covering the Custodial Services performed for University to that date, which application will be accompanied by documentation that University may reasonably request to support the invoice amount. University will, within twenty-one (21) days after the date University receives the invoice and supporting documentation for payment, approve or disapprove the

amount reflected in the invoice and, if University approves the amount or any portion of the amount, University will promptly pay to Contractor the amount approved in accordance with Chapter 2251, *Texas Government Code*. If University disapproves any amount invoiced by Contractor, University will give Contractor specific reasons for its disapproval in writing within twenty-one (21) days after the date University receives the invoice and supporting documentation for payment.

10.2 University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Custodial Services in accordance with §151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* (“TAC”) §3.322.

10.3 Within ten (10) days after termination of this Agreement, Contractor will submit a final invoice ("**Final Invoice**") which will set forth all amounts due and remaining unpaid to Contractor and upon approval of the Final Invoice by University, University will pay ("**Final Payment**") to Contractor the amount due under the Final Invoice.

10.4 The cumulative amount of all Progress Payments and the Final Payment will not exceed \$ \_\_\_\_\_.

10.5 Notwithstanding any provision to the contrary, University will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if any one or more of the following conditions exist:

10.5.1 Contractor is in breach or default under this Agreement; or

10.5.2 Any part of the payment is attributable to Custodial Services which are not performed in accordance with this Agreement; provided, however, payment will be made as to the part attributable to Custodial Services which are performed in accordance with this Agreement.

10.6 No partial payment made will be or construed to be final acceptance or approval of that part of the Custodial Services to which the partial payment relates or relieve Contractor of any of its obligations under this Agreement.

10.7 The acceptance of Final Payment constitutes a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the Final Invoice.

10.8 Except for the obligation of University to pay Contractor certain amounts pursuant to the terms of this Agreement, University will have no other liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of University to Contractor, no present or future agent, officer, director, employee, or regent of University or of the institutions comprising The University of Texas System, or anyone claiming under University, has or will have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

10.9 Section 51.012, *Texas Education Code*, authorizes University to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from University through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, University will confirm Contractor's banking information. Any changes to Contractor's banking information must be communicated to University in writing at least thirty (30) days in advance of the effective date of the change.

11. **PERSONNEL; RESPONSIBILITY FOR INDIVIDUALS PERFORMING WORK; CRIMINAL BACKGROUND CHECKS –**

11.1 Contractor agrees to:

11.1.1 maintain a staff of properly trained and experienced personnel to ensure consistent, efficient and satisfactory performance under this Agreement;

11.1.2 assign an adequate number of personnel to the Service Areas to ensure consistent, efficient and satisfactory performance under this Agreement; and

11.1.3 provide sufficient back-up personnel in times of staff shortages due to vacations, illness and inclement weather, to ensure consistent, efficient and satisfactory performance under this Agreement.

11.2 Contractor agrees that, at all times, the employees of Contractor furnishing or performing any of the Custodial Services specified under this Agreement will do so in a proper, good, workmanlike and dignified manner.

11.3 Contractor has the right to terminate any of its employees or personnel at any time. In addition, Contractor acknowledges that University has the rights to (a) require identification from any person on University's premises, (b) refuse entry to persons having no legitimate business on University's premises, and (c) eject any undesirable person refusing to leave peaceably on request. Contractor will cooperate with all authorized University representatives in the exercise of University's rights described in this Section.

11.4 Every employee and agent of Contractor assigned to duty on University's premises will have prominently displayed on his or her person at all times while on University's premises an identification badge including a picture of the employee or agent. The identification badge, which will also serve as an access card, will be issued through University's Office of the Department of Police ("ODOP").

11.5 Contractor will provide company identifying uniforms to all Contractor's "non-management" personnel used in the performance of Contractor's duties and obligations under this Agreement. All Contractor's "non-management" personnel assigned to duty on University's premises will be required to wear a company identifying uniform while

performing their duties. All uniforms will be neat, clean, well-pressed and in good condition.

11.6 Contractor will advise University's representative of the telephone numbers and addresses of Contractor's management personnel and will arrange for at least one of Contractor's management personnel to be available at all times (twenty-four hours a day, seven days a week, 365/366 days a year) by telephone.

11.7 Each individual who is assigned to perform the Custodial Services under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Custodial Services under this Agreement. Prior to commencing the Custodial Services, Contractor will (1) provide University with a roster ("**Roster**") of all individuals who may be assigned to perform the Custodial Services on University's premises and (2) have an appropriate criminal background screening performed on all the individuals on the Roster. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Custodial Services is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the Roster each time there is a change in the individuals assigned to perform the Custodial Services on University's premises.

Prior to commencing performance of the Custodial Services under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals on the Roster.

11.8 Each individual who is assigned to perform the Custodial Services under this Agreement will be an employee of Contractor or an employee of a permitted subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Custodial Services under this Agreement. Prior to commencing the Custodial Services, Contractor will (1) provide University with a roster ("**Roster**") of each and every individual who may be assigned to perform the Custodial Services, and (2) have an appropriate criminal background screening performed on all those individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Custodial Services is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's premises who has a history of criminal conduct unacceptable for a university campus, including violent or sexual offenses. The Roster will contain all information as University may reasonably request and will be provided to University upon request. Contractor will update the Roster each time there is a change in the individuals assigned to perform the Custodial Services. Prior to commencing performance of the Custodial Services under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an

updated certification letter each time there is a change in the individuals assigned to perform the Custodial Services.

12. **SUPERVISION; COORDINATION** – Contractor will provide, at all times, adequate and expert supervisory staff (“**Supervisory Staff**”) assigned exclusively to University to manage Contractor’s employees in the Services Areas. Supervisory Staff will include a dispatcher to coordinate Contractor’s daily office activities. The Supervisory Staff will be on University’s premises at all times while the Custodial Services are being provided and will not leave University’s premises until all services and security matters are completed each night. Neither University nor any representative of University will supervise Contractor’s employees, personnel or agents performing the Custodial Services

In addition, Contractor will provide an on-site manager (“**On-Site Manager**”) assigned to the Service Areas on a full-time basis. The On-Site Manager, with the assistance of a supervisor for each and every shift (“**Shift Supervisor**”), will coordinate all activities connected with the provision of the Custodial Services specified under this Agreement and will meet with University's Designated Representative periodically, on mutually agreeable dates and at mutually agreeable times, to coordinate the enforcement of University's policies, the implementation of University’s suggestions and requests, and the prompt resolution of complaints.

In addition to the supervision of all Custodial Services, the Supervisory Staff will become familiar with the emergency, fire, and disaster plans developed by University for University’s premises and perform the duties assigned to Supervisory Staff by University as relates to the emergency, fire and disaster plans.

13. **LABOR RELATIONS** – Contractor agrees to take immediate and reasonable steps to continue its provision of the Custodial Services under this Agreement in the event of any labor dispute or other action involving its employees.
14. **REPORTS BY CONTRACTOR** – Contractor will submit inspection reports **weekly** to University’s Facilities Manager or Designated Representative. Inspection reports will be prepared and signed by Contractor's On-Site Manager or Shift Supervisor. At University’s request, Contractor will at any time during the term of this Agreement provide a report on inspections, maintenance schedules, equipment, staffing, emergencies, security problems or any related matters in connection with the Service Areas or other University premises.

In addition, Contractor will submit one (1) complete sets of all *Material Safety Data Sheets* (“**MSDS**”) to University’s Facilities Manager or Designated Representative *in advance* for all materials being used by Contractor in the Service Areas or on other University premises.

15. **INDEPENDENT CONTRACTOR** – Contractor recognizes that it is engaged as an independent contractor and acknowledges that University has no responsibility to provide transportation, insurance, vacation or other fringe benefits normally associated with employee status. Contractor, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with that status, that it will neither

hold itself out as, nor claim to be an officer, partner, employee or agent of University, and that it will not make any claim, demand or application to or for any right or privilege applicable to an officer, representative, employee or agent of University, including unemployment insurance benefits, social security coverage or retirement benefits. Contractor agrees to make its own arrangements for any fringe benefits as it may desire and agrees that it is responsible for all income taxes required by Applicable Laws. All of Contractor's employees providing Custodial Services to University will be deemed employees solely of Contractor and will not be deemed for any purposes whatsoever employees or agents of, acting for or on behalf of, University. No acts performed or representations, whether oral or written, made by Contractor with respect to third parties will be binding upon University.

16. **INSURANCE**—

16.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the [Texas Insurance Code](#), having an A.M. Best Rating of A-:VIII or better, and in amounts not less than the following minimum limits for each coverage. The insurance requirements herein are minimum requirements for this contract and in no way limit the indemnity covenants contained in this contract. The University of Texas System Board of Regents, The University of Texas System and University of Texas System institutions in no way warrant that the minimum limits contained herein are sufficient to protect the Contractor, his agents, representatives, employees, or subcontractors, and Contractor is free to purchase additional insurance as may be determined necessary.

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

Employers Liability - Each Accident	\$1,000,000
Employers Liability – Disease - Each Employee	\$1,000,000
Employers Liability – Disease - Policy Limit	\$1,000,000

Workers' Compensation policy must include under Item 3.A. on the information page of the Workers' Compensation policy the state in which Work is to be performed for University.

16.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 300,000
Personal & Advertising Injury	\$1,000,000

General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

Policy shall include bodily injury, property damage and liability assumed under an insured contract, including defense costs with respect to liability arising out of activities performed by or on behalf of the Contractor.

16.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

Contractors transporting hazardous materials must provide the MCS-90 endorsement and CA9948 Broadened Pollution Liability endorsement on the Business Auto Liability policy. Policy limits must be in line with Federal requirements.

16.1.6 Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$3,000,000 aggregate. Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.

16.1.7 Contractor's Employee Dishonesty Insurance will be endorsed with a Client's Property Endorsement (or equivalent) to protect the assets and property of University with limits of not less than \$500,000 per claim. If Contractor has property of University in its care, custody or control away from University's premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor's Employee Dishonesty policy will name University as Loss Payee.

16.2 Contractor will deliver to University:



16.2.1 After the execution and delivery of this Agreement and prior to the performance of any Work by Contractor, evidence of insurance on a Texas Department of Insurance (TDI) approved certificate form (the Acord form is a TDI-approved form) verifying the existence and actual limits of all required insurance policies; and, if the coverage period shown on the current certificate form ends during the Term, then prior to the end of the coverage period, a new certificate form verifying the continued existence of all required insurance policies.

16.2.1.1 All insurance policies (except for workers' compensation, employer's liability and professional liability) will be endorsed and name University of Texas Permian Basin, The University of Texas System Board of Regents, and The University of Texas System. as Additional Insureds for liability caused by Contractor's acts or omissions with respect to its on-going and completed operations A Blanket Additional Insured Certificate is also acceptable. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

16.2.1.2 Contractor hereby waives all rights of subrogation against the University of Texas Permian Basin, The University of Texas System Board of Regents, and The University of Texas System. All insurance policies will be endorsed to provide a waiver of subrogation in favor of the [UT Institution should be inserted here if the institution is a party to the agreement, i.e., The University of Texas at Austin], The University of Texas System Board of Regents, and The University of Texas System. A Blanket Waiver of Subrogation Certificate is also acceptable. No policy will be canceled until after thirty (30) days' unconditional written notice to University. Contractor will send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 16**.

16.2.1.3 Contractor will pay any deductible or self-insured retention forclaims covered by policies required in this Agreement.

16.2.1.4 Certificates of Insurance; Additional Insured Endorsements/Blanket Additional Insured; Waiver of Subrogation/Blanket Waiver of Subrogation. Endorsements required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name: Lail Grant  
Address: 4901 E. University Blvd.  
Odessa, TX 79762  
Email Address: grant\_l@utpb.edu

16.3 Contractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing.

17. **KEYS AND ACCESS CARDS** – Contractor will be furnished, or given access to, keys and access cards to the Service Areas and will be held responsible for their use and misuse. All keys and access cards remain the property of University. Contractor will be liable for the cost of any replacement keys and access cards, and for the cost of any re-keying or re-programming of locks necessitated by loss of keys and access cards. University keys and access cards will not be taken out of the Service Areas except for keys and access cards necessary for Contractor's Supervisory Staff to access the Space (ref. **Section 19**).

18. **REPORTING NEEDED REPAIRS** – Contractor's employees will report to University's Facilities Manager or Designated Representative any conditions of dripping or leaking faucets, stopped toilets and drains, broken fixtures, all other necessary or appropriate repairs and any unusual happenings in the Service Areas or on University's premises.

19. **ACCESS TO UNIVERSITY FACILITIES; SPACE LICENSE** –

19.1 Contractor and its employees, permitted subcontractors and agents may access only the Service Areas and those University facilities that are necessary to perform Contractor's duties and obligations under this Agreement and will have no right of access to any other University facilities. Contractor and its employees, permitted subcontractors and agents will not use any University equipment including computers, printers, typewriters, radios, televisions, telephones, desks, chairs or other equipment, and will not disturb papers or other items on desks or in open drawers or cabinets located on University's premises.

19.2 University will permit Contractor to use certain space (the "**Space**") more particularly described in **SCHEDULE 4** attached and incorporated for all purposes, in accordance with the license contained in this Section. University will provide the Space equipped with desks, chairs and local phone service only. University will **not** provide computers, printers or other office machines or supplies.

University will and does hereby license the Space in its current, "as is" condition to Contractor for use by Contractor's employees, permitted subcontractors and agents in the performance of the Custodial Services and for no other purpose. The parties agree that this is a non-exclusive license to use the Space and that University may enter the Space at any time for any reason. No unlawful activities will be permitted in the use of the Space. Contractor will comply with all Applicable Laws applicable to the Space. Contractor will cause all of its employees, subcontractors and agents to observe and comply with all Applicable Laws, including University's rules and regulations in connection with the use of the Space.

Contractor will not modify, alter or repair the Space or any other University facilities without the prior written approval of University and with project management of renovations by University.

Contractor agrees not to harm the Space or make any use of the Space that is offensive as determined by University. Contractor agrees that upon the termination of this Agreement for any reason, Contractor will remove Contractor owned equipment and other effects, repair any damage caused by the removal, and peaceably deliver up the Space in clean condition and in good order, repair and condition, ordinary wear and tear excepted. Any personal property of Contractor not removed within two (2) days following the termination will be deemed abandoned by Contractor and University may dispose of the property in any manner it chooses, with no liability or reimbursement obligation to Contractor.

Contractor agrees not to suffer any mechanic's lien to be filed against the Space or the adjoining facilities by reason of any work, labor, services, or materials performed at or furnished to the Space for Contractor. Nothing in this Agreement will be construed as the consent of University to subject University's estate in the Space or adjoining facilities to any lien.

Contractor agrees that the Space is sufficiently equipped for Contractor to provide the Custodial Services in accordance with the terms and conditions of this Agreement.

UNIVERSITY WILL NOT BE RESPONSIBLE FOR INTERRUPTIONS IN UTILITY SERVICE TO THE SPACE. HOWEVER, UNIVERSITY WILL EXERCISE REASONABLE DILIGENCE IN PURSUING THE RESTORATION OF INTERRUPTED UTILITY SERVICE.

UNIVERSITY WILL NOT BE LIABLE TO CONTRACTOR, OR ANY EMPLOYEE, SUBCONTRACTOR, AGENT, GUEST OR INVITEE OF CONTRACTOR (COLLECTIVELY, "**CONTRACTOR PARTIES**"), FOR ANY LOSS, EXPENSE OR DAMAGE EITHER TO THE PERSON OR PROPERTY SUSTAINED BY REASON OF ANY CONDITION OF THE SPACE, OR DUE TO ANY ACT OF ANY EMPLOYEE OR AGENT OF UNIVERSITY, OR THE ACT OF ANY OTHER PERSON WHATSOEVER. UNIVERSITY, ITS AGENTS AND EMPLOYEES WILL NOT BE LIABLE FOR AND CONTRACTOR WAIVES ALL CLAIMS FOR DAMAGE TO PERSON OR PROPERTY SUSTAINED BY ANY CONTRACTOR PARTIES, RESULTING FROM ANY ACCIDENT OR OCCURRENCE IN OR UPON THE SPACE OR THE ADJOINING GROUNDS. CONTRACTOR AGREES TO PAY ON DEMAND UNIVERSITY'S EXPENSES INCURRED IN ENFORCING ANY OBLIGATION OF CONTRACTOR UNDER THIS LICENSE.

20. **PRESENCE ON UNIVERSITY PREMISES –**

20.1 Contractor agrees that it will ensure that all of its employees, subcontractors and agents whose duties bring them upon University's premises will obey the rules and

regulations that are established by University and will comply with reasonable directions University's representatives may give to Contractor.

20.2 Contractor is responsible for acts of its employees, subcontractors and agents while on University's premises. Accordingly, Contractor agrees to take all necessary measures to prevent injury and loss to persons and property located on University's premises. Contractor is responsible for all damages to persons or property caused by Contractor or any of its employees, subcontractors and agents. Contractor will promptly repair, in accordance with the specifications of University, any damage that it, or of its employees, subcontractors and agents, may cause to University's premises or equipment. On Contractor's failure to do so, University may repair the damage and Contractor will reimburse University promptly for any and all reasonable expenses incurred in connection with the repair. At its option, University may offset against all amounts due to Contractor any and all reasonable expenses incurred in connection with the repair.

20.3 Contractor agrees that, in the event of an accident of any kind, Contractor will immediately notify University's Police Department at \_\_\_\_\_ and University's Facilities Manager or Designated Representative at \_\_\_\_\_, and thereafter furnish a full written report of the accident.

20.4 Contractor will perform the Custodial Services contemplated in this Agreement without interfering in any way with the activities of University's employees, agents or visitors.

21. **PREMISES SECURITY –**

21.1 University's ODOP has the authority and responsibility to maintain the security of all University premises and property. Contractor will cooperate with **the University's** Police Department ODOP in all matters including the reporting of suspected security violations. Contractor will immediately report any evidence of security breaches to University's Police Department ODOP at 432.552.2786.

21.2 Under no circumstances will keys or access cards in Contractor's possession be used to admit persons, known or unknown, into buildings, rooms, or offices or other facilities on University's premises. Anyone requesting admittance must be referred by Contractor to University's Police Department ODOP at 432.552.2786.

21.3 In an effort to maintain maximum security in each Service Area, **ALL DOORS ARE TO BE UNLOCKED ONLY WHILE CLEANING IS BEING PERFORMED AND MUST BE CLOSED AND LOCKED AFTER CLEANING IS COMPLETE.** Lights are to be turned off when Contractor leaves each room in a Service Area. At no time will Contractor permit an unattended room in a Service Area to remain unlocked or lighted. CONTRACTOR AND UNIVERSITY AGREE THAT LEAVING DOORS UNLOCKED AND LIGHTS ON AFTER CLEANING OF A ROOM IN A SERVICE AREA COULD RESULT IN THE DISRUPTION OF UNIVERSITY'S BUSINESS OPERATIONS AND THE RESULTING HARM IS INCAPABLE OF BEING ESTIMATED OR IS DIFFICULT TO ESTIMATE. THEREFORE, AS A REASONABLE ESTIMATE OF JUST

COMPENSATION FOR THE HARM CAUSED BY LEAVING DOORS UNLOCKED AND LIGHTS ON AFTER CLEANING OF A ROOM IN A SERVICE AREA, CONTRACTOR AND UNIVERSITY AGREE THAT, IF DOORS REMAIN UNLOCKED OR LIGHTS REMAIN ON AFTER CLEANING OF A ROOM IN A SERVICE AREA, THEN AT UNIVERSITY'S OPTION (1) CONTRACTOR WILL PAY UNIVERSITY AN AMOUNT EQUAL TO \$50.00 FOR EACH OCCURRENCE, OR (2) UNIVERSITY MAY OFFSET AN AMOUNT EQUAL TO \$50.00 FOR EACH OCCURRENCE FROM ANY AMOUNTS OTHERWISE DUE BY UNIVERSITY TO CONTRACTOR. CONTRACTOR AND UNIVERSITY AGREE THAT THIS REMEDY IS NOT A PENALTY BUT IS A REASONABLE ESTIMATE OF JUST COMPENSATION TO UNIVERSITY.

22. **UTILITIES** –Except as provided in **Section 19.2**, University will provide utility services at existing outlets (heat, gas, electricity, water, and sewer), for the convenience of Contractor. Any modification to existing outlets required or requested by Contractor will be made at the sole discretion of University, at Contractor's expense. In the event any utility service must be interrupted for repair or modification, University will provide Contractor with advance notice, if possible. UNIVERSITY WILL NOT BE RESPONSIBLE FOR INTERRUPTIONS IN UTILITY SERVICE. HOWEVER, UNIVERSITY WILL EXERCISE REASONABLE DILIGENCE IN PURSUING THE RESTORATION OF INTERRUPTED UTILITY SERVICE.

23. **RESPONSIBILITY FOR TOOLS, MATERIALS, SUPPLIES AND OTHER PERSONAL PROPERTY** – University has no responsibility for the loss, theft, mysterious disappearance of or damage to equipment, tools, materials, supplies, and other personal property of Contractor or its agents, employees or subcontractors, which may be located or stored on University's premises.

24. **DEFAULT AND TERMINATION** –

24.1 In the event of a material failure by Contractor to perform in accordance with the terms of this Agreement, University may terminate this Agreement at any time upon giving ten (10) days' advance written notice to Contractor setting forth the nature of Contractor's failure.

24.2 In addition, if at any time an involuntary petition of bankruptcy is filed against Contractor and not dismissed within thirty (30) days, or if Contractor files a voluntary petition in bankruptcy, takes advantage of any insolvency law, or if a receiver or trustee is appointed and the appointment is not vacated within thirty (30) days, University has the right to terminate this Agreement upon fifteen (15) days advance written notice to Contractor, in addition to any other rights of any nature that University may have at law or in equity.

24.3 University may, without cause, terminate this Agreement at any time upon giving thirty (30) days' advance written notice to Contractor. Upon termination pursuant to this Section, Contractor is entitled to payment of an amount that will compensate Contractor for Custodial Services satisfactorily performed from the time of the last payment to the

termination date in accordance with this Agreement. University is not required to reimburse Contractor for any Custodial Services performed or expenses incurred after the termination date.

24.4 Termination under **Sections 24.1, 24.2 or 24.3** does not relieve Contractor or any of its employees from liability for violations of this Agreement or any other act or omission of Contractor. No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including **Sections 2, 10, 15, 19, 23, 24, 25, 26, 27, 30, 33, 35, 37, 38, 41, 42, 43, 46, 47, 49, 50, and 51.**

24.5 University is entitled (but not obligated) to cure any default of Contractor and has the right to offset against all amounts due to Contractor any and all reasonable expenses incurred in connection with curative actions.

24.6 In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University did not receive from Contractor prior to termination.

25. **INDEMNIFICATION** – TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND THE UNIVERSITY OF TEXAS 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, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS’ FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY “**CLAIMS**”) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR’S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

26. **CONFIDENTIALITY AND SAFEGUARDING OF UNIVERSITY RECORDS; PRESS RELEASES; PUBLIC INFORMATION** – Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, “**University Records**”). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C.

§1232g (“FERPA”). If University Records are subject to FERPA, (1) University designates Contractor as a University official with a legitimate educational interest in University Records, and (2) Contractor acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records will result in Contractor’s exclusion from eligibility to contract with University for at least five (5) years. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to the security controls, including reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data Security Standards) that are that are proportionate to the University’s risk under the Agreement based on the sensitivity of University’s Records, and no less rigorous than the standards by which Contractor protects its own confidential information, and periodically provide to University evidence that Contractor meets the security controls required under the Agreement; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with University’s rules, policies, and procedures regarding access to and use of University’s computer systems. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

- 26.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor’s discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.
- 26.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor’s intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.
- 26.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.
- 26.4 **Press Releases.** Except when defined as part of the Custodial Services, Contractor will not make any press releases, public statements, or advertisement

referring to the Custodial Services or the engagement of Contractor as an independent contractor of University in connection with the Custodial Services, or release any information relative to the Custodial Services for publication, advertisement or any other purpose without the prior written approval of University.

- 26.5 **Public Information.** University 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 §552.002 of TPIA and §2252.907, *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.
- 26.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.
- 26.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
27. **COMPLIANCE WITH LAW** – Contractor is aware of, fully informed about and in full compliance with its obligations under with all applicable, federal, state and local, laws, regulations, codes, ordinances and orders and with those of any other body or authority having jurisdiction (“**Applicable Laws**”), 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), *Vietnam Era Veterans Readjustment Act of 1974*, as amended (41 CFR 60-250), *Rehabilitation Act of 1973*, as amended (41 CFR 60-741), *Age Discrimination Act of 1975* (42 USC §6101 et seq.), Non-segregated Facilities (41 CFR §60-1), *Fair Labor Standards Act of 1938*, §§6, 7, and 12, as amended, *Immigration Reform and Control Act of 1986*, Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 95-507), *Americans with Disabilities Act of 1990* (42 USC §12101 et seq.), *Civil Rights Act of 1991*, *Occupational Safety and Health Act of 1970*, as amended (PL 91-596), *Immigration and Nationality Act* (8 *United States Code* 1324a) and all other applicable laws. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, nor anyone acting for that firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor’s response to University’s procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.



28. **UNDOCUMENTED WORKERS** – The *Immigration and Nationality Act* (8 *United States Code* 1324a) (“**Immigration Act**”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“**I-9 Form**”) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the 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 Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement in accordance with **Section 24** of this Agreement. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.
29. **EQUAL OPPORTUNITY** – Pursuant to Applicable Laws, Contractor represents and warrants that it is an equal opportunity employer and does not discriminate on the basis of race, color, religion, national origin, age, mental or physical disability, or sex.
30. **TAXES** – Contractor will pay when due all taxes or assessments applicable to Contractor. Contractor will comply with the provisions of all Applicable Laws related to taxes and taxing authority.
31. **CONTRACTOR CONFLICT** – Contractor agrees that it will not at any time prior to or during the term of this Agreement, either directly or indirectly, use labor or materials that could or will create any difficulty with other contractors or labor engaged by Contractor or University or with any other party in the construction, maintenance or operation of University or any part thereof.
32. **ASSIGNMENT AND SUBCONTRACTING** – This Agreement is a personal service contract for the services of Contractor. Except as specifically provided in **SCHEDULE 3**, Historically Underutilized Business Subcontracting Plan (“**HSP**”), attached and incorporated for all purposes, The Contractor's interest in this Agreement (including Contractor’s duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Applicable Laws, including Chapter 2161,

*Texas Government Code*, and 34 TAC §§20.285(g)(5), 20.585 and 20.586. The benefits and burdens of this Agreement are assignable by University.

33. **TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION** – Pursuant to §231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
34. **REPRESENTATIONS AND WARRANTIES BY CONTRACTOR** – Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
35. **PAYMENT OF DEBTS OR DELINQUENCY TO THE STATE OF TEXAS** – Pursuant to §§2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.
36. **FRANCHISE 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.
37. **LOSS OF FUNDING** – Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”) and allocation of funds by the Board of Regents of The University of Texas System (the “**Board**”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
38. **LIMITATIONS** – THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON 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 UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

39. **ENTIRE AGREEMENT; MODIFICATIONS** – This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by University and Contractor.
40. **CAPTIONS** – The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
41. **VENUE; GOVERNING LAW** – Ector County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.
42. **WAIVERS** – No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
43. **STATE AUDITOR’S OFFICE** – Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor’s Office or any successor agency (“**Auditor**”), to conduct an audit or investigation in connection with those funds pursuant to §§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 providing all records required. Contractor will include this provision in all contracts with permitted subcontractors.
44. **BINDING EFFECT** – This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.
45. **APPOINTMENT** – University hereby expressly reserves the right from time to time to designate by notice to Contractor a representative to act partially or wholly for University in connection with the performance of University's obligations hereunder. Contractor will act only upon instructions from that representative unless otherwise specifically notified to the contrary.
46. **RECORDS** – Contractor agrees that University, or any of its duly authorized representatives, at any time during the term of this Agreement, will have access to, and the

right to audit and examine, any pertinent books, documents, papers, and records of Contractor (such as sales receipts, salary lists, itemized expenses and disbursements, time reports, equipment charges, overtime reports, etc.), and related Contractor's charges incurred in its performance under this Agreement. Such records will be kept by Contractor for a period of seven (7) years after Final Payment under this Agreement. Contractor agrees to refund to University any overpayments disclosed by any audits.

47. **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 this Agreement 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:

If to University: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

*with copy to:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

or other person or address as may be given in writing by either party to the other in accordance with this Section.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Attention: \_\_\_\_\_

*with copy to:*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_  
Attention: \_\_\_\_\_

or other person or address as may be given in writing by University to Contractor in accordance with this Section.

48. **SEVERABILITY** – In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

49. **BREACH OF CONTRACT CLAIMS** –

49.1 To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Laws, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

49.1.1 Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement 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, Contractor will submit written notice, as required by subchapter B of Chapter 2260, to University in accordance with the notice provisions in this Agreement. Contractor'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 the claim, the specific contract provision that University allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The Chief Business Officer of University, or the other officer of University as may be designated from time to time by University by written notice thereof to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.

49.1.2 If the parties are unable to resolve their disputes under **Section 49.1.1**, the contested case process provided in subchapter C of Chapter 2260 is Contractor's

sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.

49.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.

49.2 The submission, processing and resolution of Contractor'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.

49.3 University and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

50. **ASSIGNMENT OF OVERCHARGE CLAIMS** – Contractor hereby assigns to University any and all claims for overcharges associated with this Agreement arising under the antitrust laws of the United States, 15 U.S.C.A. §1 et seq., or arising under the antitrust laws of the State of Texas, §15.01 et seq., *Texas Business and Commerce Code*.
51. **ETHICS MATTERS; NO FINANCIAL INTEREST** – Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy at <https://www.utpb.edu/university-offices/compliance-and-accommodations/conflict-of-interest/index>, University's Standards of Conduct Guide at <https://www.utsystem.edu/documents/docs/policies-rules/ut-system-administration-standards-conduct-guide>, and applicable state ethics laws and rules at <https://www.utsystem.edu/offices/systemwide-compliance/ethics>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Further, Contractor agrees to comply with [§2252.908, Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and [1 TAC §§46.1 through 46.5 \(Disclosure of Interested Parties Regulations\)](#), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and University with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at [https://www.ethics.state.tx.us/resources/FAQs/FAQ\\_Form1295.php](https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php).

52. **FORCE MAJEURE** – Neither party 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**”).
53. **HISTORICALLY UNDERUTILIZED BUSINESS SUBCONTRACTING PLAN** – Contractor agrees to use good faith efforts to subcontract the Custodial Services to be provided under this Agreement in accordance with the HSP. Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by the Statewide Procurement and Statewide Support Services Division of the Texas Comptroller of Public Accounts or successor entity (collectively, **SPSS**). Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the SPSS in accordance with 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). University may also revoke this Agreement for breach and make a claim against Contractor.

53.1 Changes to the HSP: If at any time during the term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (1) Contractor must comply with [34 TAC §20.285](#); (2) the changes must be reviewed and approved by University; and (3) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 41** to replace the HSP with the revised subcontracting plan.

53.2 Expansion of the Services: If University expands the scope of the services through a change order or any other amendment, University will determine if the additional services contain probable subcontracting opportunities not identified in the initial solicitation for the services. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of [34 TAC §20.285](#) before (1) this Agreement may be amended to include the additional services; or (2) Contractor may perform the additional services. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with [34 TAC §20.285](#), Contractor will be deemed to be in breach of this Agreement and will be subject to any remedial actions provided by Texas law including [Chapter 2161, Texas Government Code](#) and [34 TAC §20.285](#). University may report nonperformance under this Agreement to the SPSS in accordance with Texas law, including 34 TAC §§[20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#).

54. **CONTRACTOR CERTIFICATION REGARDING BOYCOTTING ISRAEL –** Pursuant to [Chapter 2271, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
55. **CONTRACTOR CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS –** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
56. **CONTRACTOR VERIFICATION REGARDING DISCRIMINATION AGAINST FIREARM ENTITIES OR TRADE ASSOCIATIONS.** Pursuant to [Chapter 2274, Texas Government Code \(enacted by SB 19, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)\)](#), Contractor verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate
57. **CONTRACTOR VERIFICATION REGARDING BOYCOTTING ENERGY COMPANIES.** Pursuant to [Chapter 2274, Texas Government Code \(enacted by SB 13, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)\)](#), Contractor verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
58. **CONTRACTOR CERTIFICATION REGARDING COVID-19 VACCINATION.** Pursuant to [Section 161.0085, Texas Health and Safety Code \(enacted by SB 968, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)\)](#), Contractor certifies that it does not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from Contractor's business. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
59. **FEDERAL REQUIREMENTS FOR TELECOMMUNICATIONS EQUIPMENT OR SERVICES.**
- (a) Contractor represents that it will not provide covered telecommunications equipment or services, as defined in 2 CFR § 200.216, to University in the performance of this Agreement or any contract, subcontract, or other contractual instrument resulting from this Agreement.
  - (b) In the event Contractor identifies covered telecommunications equipment or services, as defined in 2 CFR § 200.216, used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of this



Agreement, or Contractor is notified of such by a subcontractor at any tier or by any other source, Contractor shall report information about the contract, equipment item, and mitigation measures to University within one business day, and provide University with an update within ten business days that includes measures to prevent recurrence.

**60. TEXAS PUBLIC INFORMATION ACT - SUBCHAPTER J REQUIREMENTS.**

Pursuant to [Section 552.372 of the Texas Government Code](#), Contractor must:

- (1) preserve all contracting information (ref. [Section 552.003\(1-a\), Texas Government Code](#)) related to this Agreement as provided by the records retention requirements applicable to University for the duration of this Agreement;
- (2) promptly provide to the University any contracting information related to this Agreement that is in the custody or possession of Contractor on request of the University; and
- (3) on completion of this Agreement, either:
  - (A) provide at no cost to the University all contracting information related to this Agreement that is in the custody or possession of Contractor, or
  - (B) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to the University.

University may not accept a bid for a contract described by [Section 552.371, Texas Government Code](#) or award the contract to an entity that the University has determined has knowingly or intentionally failed to comply with Subchapter J in a previous bid or contract described by Section 552.371 unless the University determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of Subchapter J.

If Contractor fails to comply with the requirements of Subchapter J applicable to Contractor, then University shall provide written notice to Contractor stating the requirement(s) of Subchapter J that Contractor has violated.

**IN WITNESS WHEREOF**, duly authorized representatives of University and Contractor have executed and delivered this Agreement effective as of the Effective Date.

**CONTRACTOR:**

**UNIVERSITY:**

\_\_\_\_\_  
\_\_\_\_\_

**THE UNIVERSITY OF TEXAS  
PERMIAN BASIN**

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

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

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

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

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

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

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

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

**ATTACH:**

**SCHEDULE 1** - Statement of Work for Custodial Services

**ATTACHMENT A to SCHEDULE 1** - Standards for Custodial Services

**SCHEDULE 2** – Statement of Work for Ground Maintenances

**SCHEDULE 3** - Historically Underutilized Business Subcontracting Plan

**SCHEDULE 4** – Service Locations

**SCHEDULE 5** - Map of Service Areas

**SCHEDULE 1**

**See attachment  
Schedule 1 Scope of Work**

**ATTACHMENT A to SCHEDULE 1 –  
Standards for Custodial Services**

**See attachment**

**ATTACHMENT A to SCHEDULE 1 –  
Standards for Custodial Services**

**SCHEDULE 2**

**See attached**  
**Schedule 2 Statement of Work Grounds Maintenance Services**

**SCHEDULE 3**

**Historically Underutilized Business Subcontracting Plan**

## **SCHEDULE 4**

### **SERVICE LOCATIONS**

#### Campus Buildings

1. Mesa Building
2. Student Activity Center Building
3. Science and Technology Building
4. Library Building
5. Visual Arts Building
6. Kirk Building
7. Residence and Dining Hall
8. Student Housing Buildings 37 total
9. Parker Ranch House
10. Founders Building 3 total
11. Geosciences Building
12. STEM Academy
13. Buddy and Shirley West Building.
14. Engineering Building (Midland Campus)
15. CEED Building (Midland Campus)
16. Wagner Noel PAC (Midland Campus)
17. WNPAC Annex Building (Midland Campus)
18. Falcon House

**SCHEDULE 5**

**See link below**

**[https://general.utpb.edu/RFP/Custodial Bid Floor plans.pdf](https://general.utpb.edu/RFP/Custodial_Bid_Floor_plans.pdf)**