

REQUEST FOR PROPOSAL



by

The University of Texas PERMIAN BASIN

for

Selection of a Vendor to Provide

Managed SAML Services

related to

Migration of All Existing Integrations

RFP No. 742-22-193-2

Submittal Deadline: Thursday, November 18, 2021

Issued: Monday, October 25, 2021

REQUEST FOR PROPOSAL

TABLE OF CONTENTS

SECTION 1: <u>INTRODUCTION</u>	3
SECTION 2: <u>NOTICE TO PROPOSER</u>	4
SECTION 3: <u>SUBMISSION OF PROPOSAL</u>	7
SECTION 4: <u>TERMS AND CONDITIONS</u>	9
SECTION 5: <u>SPECIFICATIONS AND ADDITIONAL QUESTIONS</u>	10
SECTION 6: <u>PRICING AND DELIVERY SCHEDULE</u>	12

Attachments:

<u>APPENDIX ONE:</u>	PROPOSAL REQUIREMENTS
<u>APPENDIX TWO:</u>	AGREEMENT
<u>APPENDIX THREE:</u>	HUB SUBCONTRACTING PLAN
<u>APPENDIX FOUR:</u>	NOT USED
<u>APPENDIX FIVE:</u>	ACCESS BY INDIVIDUALS WITH DISABILITIES
<u>APPENDIX SIX:</u>	ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS
<u>APPENDIX SEVEN:</u>	SECURITY CHARACTERISTICS AND FUNCTIONALITY OF CONTRACTOR'S INFORMATION RESOURCES
<u>APPENDIX EIGHT:</u>	CERTIFICATE OF INTERESTED PARTIES (FORM 1295)

SECTION 1

INTRODUCTION

1.1 Description of University

The Texas Legislature established the University of Texas Permian Basin in 1969 as an upper-level institution, offering junior, senior and graduate level classes. Courses were first taught in the fall of 1973. In 1991, UTPB was granted authority by the legislature to offer freshman and sophomore level classes. Currently, UTPB offers degrees in 34 undergraduate programs and 19 Graduate areas of study. The University of Texas Permian Basin has become a leader in on-line education and offers several degrees completely on-line at the undergraduate and graduate level. Enrollment fall 2020 is approximately 6,200 with about 1,200 students residing on campus. Accredited programs include Petroleum Engineering (ABET), Mechanical Engineering (ABET), Teacher Certification (NCATE), Athletic Training (CAATE), Music (NASM), Social Work (CSWE), Business (AACSB), and Nursing (CCNE).

The first school in Texas to offer a \$10,000 bachelor's degree in select majors, UTPB has now been recognized as the fourth least expensive Texas public, four-year institution for all college expenses, including tuition and fees, according to a College for All Texans' report. The Athletic program consists of 16 NCAA Division II athletic teams involving over 400 student-athletes. UTPB is a member of the Lone Star Conference, one of the traditionally strongest conferences in the country. UTPB has been recognized by the Texas Higher Education Coordinating Board as having had a greater percentage of students employed or attending graduate school after graduation than other Texas schools. In addition, as College for Texans has pointed out, UTPB graduates exceed the state average for salaries one year after graduation. To find out more about UT Permian Basin, please visit www.utpb.edu.

1.2 Background and Special Circumstances

The University of Texas Permian Basin currently operates an on-premise Shibboleth server providing SSO service to approximately 50 applications. The current server authenticates against an aging LDAP environment. In order to provide the highest level of availability, our desire is to have a remotely hosted SAML 2.0 identity provider that authenticates against Azure AD Domain Services. We currently have all user specific attributes synchronized to our Azure AD Domain Services environment. We are a member of the InCommon Federation and the University of Texas System Federation.

1.3 Objective of Request for Proposal

The University of Texas Permian Basin (**University**) is soliciting proposals from qualified vendors to perform work (**Work**) more specifically described in **Section 5.4** (Scope of Work) of this Request for Proposal (**RFP**), including (1) Turn-key managed SAML 2.0 based authentication service; (2) Service to be completely installed, managed, and maintained by selected vendor staff; and (3) SAML 2.0 compliant environment utilizing most current version of software and migration of all existing integrations into that environment.

1.4 Group Purchase Authority

Texas law authorizes institutions of higher education (defined by [§61.003, Education Code](#)) to use the group purchasing procurement method (ref. §§[51.9335](#), [73.115](#), and [74.008](#), *Education Code*). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System (**UT System**), which is comprised of fourteen institutions described at <http://www.utsystem.edu/institutions>. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this RFP could give rise to additional purchase volumes. As a result, in submitting its proposal, Proposer should consider proposing a pricing model and other commercial terms that take into account the higher volumes and other expanded opportunities that could result from the eventual inclusion of

other institutions in the purchase contemplated by this RFP. Any purchases made by other institutions based on this RFP will be the sole responsibility of those institutions.

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals until 2:30 p.m. Central Time, on Thursday, November 18, 2021 (**Submittal Deadline**).

2.2 RFP Contact Information and Questions

Interested parties may direct questions about this RFP to:

Diana Rodriguez, Assistant Purchasing Director
UTPB Purchasing Department
The University of Texas Permian Basin
4901 E. University Blvd.
Odessa, TX 79762
Phone: (432) 552-2792
Email to: rodriguez_d@utpb.edu
Subject Line: RFP No.742-22-193-2

*University instructs interested parties to restrict all contact and questions regarding this RFP to written communications delivered (i) in accordance with this Section on or before **Monday, November 8, 2021 (Question Deadline)**, or (ii) if questions relate to Historically Underutilized Businesses, in accordance with **Section 2.5**.*

University will provide responses as soon as practicable following the Question Deadline. University intends to respond to all timely submitted questions. However, University reserves the right to decline to respond to any question.

2.3 Criteria for Selection

The successful Proposer, if any, selected by University through this RFP will be the Proposer that submits a proposal on or before the Submittal Deadline that is the most advantageous to University. **Contractor** means the successful Proposer under this RFP.

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) service, (2) total overall cost, and (3) project management expertise.

The evaluation of proposals and the selection of Contractor will be based on the information provided in the proposal. University may consider additional information if University determines the information is relevant. Criteria to be considered by University in evaluating proposals and selecting Contractor, will be these factors:

2.3.1 Threshold Criteria Not Scored

- 2.3.1.1 Ability of University to comply with laws regarding Historically Underutilized Businesses; and
- 2.3.1.2 Ability of University to comply with laws regarding purchases from persons with disabilities.

2.3.2 Scored Criteria

- 2.3.2.1 Cost of goods and services; (35 points)**
- 2.3.2.2 Reputation of the Proposer and of the Proposer's goods or services; **(10 points)**
- 2.3.2.3 Quality of the Proposer's goods or services; **(15 points)**
- 2.3.2.4 Extent to which the goods or services meet the University's needs; **(20 points)**
- 2.3.2.5 Proposer's past relationship with the University; **(5 points)**
- 2.3.2.6 Total long-term cost to the University of acquiring the Proposer's goods or services **(5 points)**
- 2.3.2.7 Any other relevant factors that a private business entity would consider in selecting a vendor (5 points)**
- 2.3.2.8 Proposer's exceptions to the terms and conditions set forth in **Section 4 (5 points)**

2.4 Key Events Schedule

Date RFP Issued	Monday, October 25, 2021
Question Deadline (ref. Section 2.2)	2:30 p.m. Central Time on Monday, November 8, 2021
Submittal Deadline	2:30 p.m. Central Time on Thursday, November 18, 2021 (ref. Section 2.1)

2.5 Historically Underutilized Businesses

- 2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (**HUBs**) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any Work, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any Work will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of Work by the Proposer is subject to review by University to ensure compliance with the HUB program.
- 2.5.2 University has reviewed this RFP in accordance with [34 Texas Administrative Code \(TAC\) §20.285](#), and has determined that subcontracting opportunities are not probable under this RFP.
- 2.5.3 A HUB Subcontracting Plan (**HSP**) is a required part of the proposal. The HSP will be developed and administered in accordance with University's Policy on Utilization of Historically Underutilized Businesses, attached as **APPENDIX THREE**.

*Each Proposer must complete and return the HSP in accordance with the terms and conditions of this RFP, including **APPENDIX THREE**. Proposers that fail to submit the HSP will be considered non-responsive to this RFP as required by §2161.252, Government Code.*

Questions regarding the HSP may be directed to:

Contact: Elsa Montalvo, Purchasing Director/HUB Program
CoordinatorUTPB Purchasing
Phone: (432) 552-2795
Email: montalvo_e@utpb.edu

Contractor will not be permitted to change its HSP unless: (1) Contractor completes a new HSP in accordance with the terms of **APPENDIX THREE**, setting forth all modifications requested by Contractor, (2) Contractor provides the modified HSP to University, (3) University approves the modified HSP *in writing*, and (4) all agreements resulting from this RFP are amended in writing to conform to the modified HSP.

2.5.4 At the same time Proposer submits its proposal (no later than the Submittal Deadline (ref. **Section 2.1**)), Proposer must submit the following HUB materials (**HUB Materials**):

- 1) One (1) complete electronic submittal of Proposer's HSP, -OR-
- 2) One (1) complete original paper copy(ies) of Proposer's HSP, and
One (1) complete electronic copy of Proposer's HSP *in a single* .pdf file on a flash drive.

Proposer's HUB Materials must be submitted (as instructed in **Section 3.2**) under separate cover and in a separate envelope (HSP Envelope) with the top outside surface clearly indicating:

- 2.5.4.1 RFP No. and the Submittal Deadline (ref. **Section 2.1**) in the lower left hand corner,
- 2.5.4.2 Name and the return address of Proposer, and
- 2.5.4.3 Phrase "HUB Subcontracting Plan."

Any proposal submitted in response to this RFP that is not accompanied by a separate HSP Envelope meeting the above requirements may be rejected by University and returned to Proposer unopened as non-responsive due to material failure to comply with advertised specifications.

University will open Proposer's HSP Envelope prior to opening the proposal to confirm Proposer submitted the HSP. Proposer's failure to submit the HSP will result in University's rejection of the proposal as non-responsive due to material failure to comply with advertised specifications.

NOTE: The requirement that Proposer provide the HSP under this **Section 2.5.4** is separate from and does not affect Proposer's obligation to provide University with the number of copies of its proposal specified in **Section 3.1**.

2.5.5 University may offer Proposer an opportunity to seek informal review of its draft HSP by University's HUB Office before the Submittal Deadline. If University extends this offer, details will be provided at the Pre-Proposal Conference (ref. **Section 2.6**) or by other means. Informal review is designed to help address questions Proposer may have about how to complete its HSP properly. Concurrence or comment on Proposer's draft HSP by University will *not* constitute formal approval of the HSP, and will *not* eliminate the need for Proposer to submit its final HSP to University as instructed by **Section 2.5**.

2.6 Pre-Proposal Conference

NONE

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

- 1) Proposer must submit (a) one (1) complete paper copy of its *entire* proposal, and (b) *one (1) complete electronic copy of its entire proposal in a single .pdf file on a flash drive*. An *original* signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) of the submitted paper copy of the proposal.
- 2) Electronic submittal of entire proposal can be submitted to the email listed below.

3.2 Submission

Proposals must be received by University on or before the Submittal Deadline (ref. **Section 2.1**) and delivered to:

Diana Rodriguez, Assistant Purchasing Director
UTPB Purchasing Department
University of Texas Permian Basin
4901 E. University Blvd
Odessa, TX 79762
Phone: 432) 552-2792
Email: rodriguez_d@utpb.edu.

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of one hundred twenty (120) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.4 Terms and Conditions

- 3.4.1 Proposer must comply with the requirements and specifications contained in this RFP, including the Agreement (ref. **APPENDIX TWO**), the Notice to Proposer (ref. **Section 2**), Proposal Requirements (ref. **APPENDIX ONE**) and the Specifications and Additional Questions (ref. **Section 5**). If there is a conflict among the provisions in this RFP, the provision requiring Proposer to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

- 3.4.1.1 Specifications and Additional Questions (ref. **Section 5**);
- 3.4.1.2 Agreement (ref. **APPENDIX TWO**);
- 3.4.1.3 Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4 Notice to Proposers (ref. **Section 2**).

3.5 Submittal Checklist

Proposer is instructed to complete, sign, and return the following documents as a part of its proposal. If Proposer fails to return each of the following items with its proposal, then University may reject the proposal:

- 3.5.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**)
- 3.5.2 Signed and Completed Pricing and Delivery Schedule (ref. **Section 6**)
- 3.5.3 Responses to Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**)
- 3.5.4 Signed and Completed Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**)
- 3.5.5 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. **Section 5**)
- 3.5.6 Signed and completed originals of the HUB Subcontracting Plan or other applicable documents (ref. **Section 2.5** and **APPENDIX THREE**).

SECTION 4

GENERAL TERMS AND CONDITIONS

The terms and conditions contained in the attached Agreement (ref. **APPENDIX TWO**) or, in the sole discretion of University, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreement that results from this RFP. If Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will submit a list of the exceptions as part of its proposal in accordance with **Section 5.3.1**. Proposer's exceptions will be reviewed by University and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then University may consider Proposer's exceptions when University evaluates the Proposer's proposal.

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

Minimum requirements and specifications for Work, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in **Section 2.3**, **Contractor** means the successful Proposer.

5.2 Minimum Requirements

Each Proposal must include information that clearly indicates that Proposer meets each of the following minimum qualification requirements:

5.2.1 Hosting Infrastructure

5.2.2 Managed Services specifically related to SAML 2.0 deployment

5.2.3 Consulting Services

5.3 Additional Questions Specific to this RFP

Proposer must submit the following information as part of Proposer's proposal:

5.3.1 If Proposer takes exception to any terms or conditions set forth in **APPENDIX TWO**), Proposer must submit a list of the exceptions.

5.3.2 By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**), Proposer agrees to comply with Certificate of Interested Parties laws (ref. [§2252.908, Government Code](#)) and [1 TAC §§46.1 through 46.5](#)) as implemented by the Texas Ethics Commission (**TEC**), including, among other things, providing TEC and University with information required on the form promulgated by TEC and set forth in **APPENDIX EIGHT**. *Proposer may learn more about these disclosure requirements, including applicable exceptions and use of the TEC electronic filing system, by reviewing [§2252.908, Government Code](#), and information on the TEC website at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php. **The Certificate of Interested Parties must only be submitted by Contractor upon delivery to University of a signed Agreement.***

5.3.3 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the "Access by Individuals with Disabilities" language that is set forth in **APPENDIX FIVE, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the "Access by Individuals with Disabilities" language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer's objection. **NOTE:** A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION.

5.3.4 In its proposal, Proposer must respond to each item listed in **APPENDIX SIX, Electronic and Information Resources (EIR) Environment Specifications**. **APPENDIX SIX** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to provide to University. Responses to **APPENDIX SIX** will be incorporated into the Agreement and will be binding on Contractor.

5.3.5 In accordance with [§361.965\(d\), Health and Safety Code](#), Proposer must demonstrate whether it has a program to recycle the computer equipment of other manufacturers, including collection events and manufacturer initiatives to accept computer equipment labeled with another manufacturer's brand.

5.3.6 In its proposal, Proposer must respond to each item listed in **APPENDIX SEVEN, Security Characteristics and Functionality of Contractor's Information Resources**. **APPENDIX SEVEN** will establish specifications, representations, warranties and agreements related to the EIR that Proposer is offering to

provide to University. Responses to **APPENDIX SEVEN** will be incorporated into the Agreement and will be binding on Contractor.

5.4 Scope of Work

Contractor will provide the following services to University:

The University of Texas Permian Basin seeks a qualified vendor to provide a turn-key managed SAML 2.0 based authentication service. Service is to be completely installed, managed, and maintained by selected vendor's staff. Service should be highly available utilizing redundant systems with the capacity to support authentication capacity for approximately 10,000 users. It is expected that vendor will deploy a new SAML 2.0 compliant environment utilizing the most current version of software and migrate all existing integrations into that environment. The existing implementation contains approximately 50 service provider integrations provided by a Shibboleth server. Full access to the existing configuration files will be provided to the awarded vendor.

Specific requirements include:

5.4.1 Hosting Infrastructure

- Highly available, redundant environment capable of supporting the authentication activity of approximately 10,000 users
- Ample storage to support the environment including capacity to store the logging activity for up to 1 year
- Available Bandwidth of at least 20 GB

5.4.2 Managed Services

Selected vendor is expected to provide the following service:

- Provide support for all issues related to the deployed applications and the supporting infrastructure such that it will require minimal involvement of University staff once deployed
- Continuously monitor all hosted environments to ensure that the deployed application and infrastructure is functioning properly
- Will respond 24x7x365 to any outage affecting the entire production environment
- Will specify the expected SLA and the applicable return to the customer should be SLA not be met
- Will perform regular maintenance on the hosted environment, to include maintaining current patch levels of both the OS and maintaining the latest supported application version and all applicable security patches
- Will notify client of pending update activity, while minimizing downtime due to the highly available environment
- Will harden all deployed servers following generally accepted security best practices
- Will monitor all environments with an Intrusion Detection System
- Will operate client environment in an isolated cloud infrastructure
- Utilize MFA using Duo (currently) with the possibility of moving to Microsoft MFA in the future

5.4.3 Consulting Services

Each of these will be handled on a case by case basis with an additional Statement of Work and/or Amendment:

- After the initial deployment and migration of existing Service Provider (SP) integrations, vendor will include up to 10 additional integrations per year. Please include pricing for each integration over the allotted 10.
- Special storage or bandwidth needs
- Any additional custom request that fall outside of the parameters specified in this RFP.

SECTION 6

PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Proposer Name)

To: University

RFP No.: 742-22-193-2

Ladies and Gentlemen:

Having examined specifications and requirements of this RFP (including attachments), the undersigned proposes to furnish Work upon the pricing terms quoted below:

6.1 Term of Agreement

University anticipates that the term of the Agreement may be up to **three (3)** years with the initial term of the Agreement proposed to begin on _____, 20____, and proposed to expire on _____, 20____. University may elect to renew the Agreement for up to two **(2) additional one (1) year terms**.

6.2 Pricing for Work and Expenses

University will *not* reimburse Contractor for expenses.

6.3 Discounts

Describe all discounts that may be available to University, including educational, federal, state and local discounts.

6.4 Schedule for Completion of Tasks and Submittal of Deliverables

Services need to be in place by Monday, December 13, 2021

6.5 Payment Terms

University's standard payment terms are "net 30 days" as mandated by the *Texas Prompt Payment Act* (ref. [Chapter 2251, Government Code](#)).

Indicate below the prompt payment discount that Proposer offers:

Prompt Payment Discount: _____ % _____ days/net 30 days.

[Section 51.012, Education Code](#), authorizes University to make payments through electronic funds transfer methods. Respondent agrees to accept payments from University through those methods, including the automated clearing house system (ACH). Respondent agrees to provide Respondent's banking information to University in writing on Respondent letterhead signed by an authorized representative of Respondent. Prior to the first payment, University will confirm Respondent's banking information. Changes to Respondent's bank information must be communicated to University in writing at least thirty (30) days before the effective date of the change and must include an [IRS Form W-9](#) signed by an authorized representative of Respondent.

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with [§151.309, Tax Code](#), and [Title 34 TAC §3.322](#). Pursuant to [34 TAC §3.322\(c\)\(4\)](#), University is not required to provide a tax exemption certificate to establish its tax exempt status.

Respectfully submitted,

Proposer:

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX ONE
PROPOSAL REQUIREMENTS

TABLE OF CONTENTS

SECTION 1: GENERAL INFORMATION 15

SECTION 2: EXECUTION OF OFFER 18

SECTION 3: PROPOSER'S GENERAL QUESTIONNAIRE 21

SECTION 4: ADDENDA CHECKLIST 23

SECTION 1

GENERAL INFORMATION

1.1 Purpose

University is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience providing services in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by University.

By submitting a proposal, Proposer certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of services to be performed, the detailed requirements of services to be provided, and the conditions under which services are to be performed. Proposer also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of the Proposer.

PROPOSER IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

1.2 Inquiries and Interpretations

University may in its sole discretion respond in writing to written inquiries concerning this RFP and mail its response as an Addendum to all parties recorded by University as having received a copy of this RFP. Only University's responses that are made by formal written Addenda will be binding on University. Any verbal responses, written interpretations or clarifications other than Addenda to this RFP will be without legal effect. All Addenda issued by University prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes.

Proposers are required to acknowledge receipt of each Addendum as specified in this Section. The Proposer must acknowledge all Addenda by completing, signing and returning the Addenda Checklist (ref. **Section 4 of APPENDIX ONE**). The Addenda Checklist must be received by University prior to the Submittal Deadline and should accompany the Proposer's proposal.

Any interested party that receives this RFP by means other than directly from University is responsible for notifying University that it has received an RFP package, and should provide its name, address, telephone and facsimile (**FAX**) numbers, and email address, to University, so that if University issues Addenda to this RFP or provides written answers to questions, that information can be provided to that party.

1.3 Public Information

Proposer is hereby notified that University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

University may seek to protect from disclosure all information submitted in response to this RFP until such time as a final agreement is executed.

Upon execution of a final agreement, University will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act* (ref. [Chapter 552, Government Code](#)). Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under §§[552.101](#), [552.104](#), [552.110](#), [552.113](#), and [552.131](#), *Government Code*.

1.4 Type of Agreement

Contractor, if any, will be required to enter into a contract with University in a form substantially similar to the Agreement between University and Contractor attached to this RFP as **APPENDIX TWO**, and otherwise acceptable to University in all respects (**Agreement**).

1.5 Proposal Evaluation Process

University will select Contractor by using the competitive sealed proposal process described in this Section. Any proposals that are not submitted by the Submittal Deadline or that are not accompanied by required number of completed and signed originals of the HSP will be rejected by University as non-responsive due to material failure to comply with this RFP (ref. **Section 2.5.4**). Upon completion of the initial review and evaluation of proposals, University may invite one or more selected Proposers to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Contractor.

University may make the selection of Contractor on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of Contractor on the basis of negotiation with any of the Proposers. In conducting negotiations, University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

University may discuss and negotiate all elements of proposals submitted by Proposers within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, University may defer further action on proposals not included within the competitive range pending the selection of Contractor; provided, however, University reserves the right to include additional proposals in the competitive range if deemed to be in the best interest of University.

After the Submittal Deadline but before final selection of Contractor, University may permit Proposer to revise its proposal in order to obtain the Proposer's best and final offer. In that event, representations made by Proposer in its revised proposal, including price and fee quotes, will be binding on Proposer. University will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. University is not obligated to select the Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to University overall, as determined by University.

University reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently

abandon this selection process, if deemed to be in the best interests of University. Proposer is hereby notified that University will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by University.

1.6 Proposer's Acceptance of RFP Terms

Proposer (1) accepts [a] Proposal Evaluation Process (ref. **Section 1.5 of APPENDIX ONE**), [b] Criteria for Selection (ref. **Section 2.3**), [c] Specifications and Additional Questions (ref. **Section 5**), [d] terms and conditions of the Agreement (ref. **APPENDIX TWO**), and [e] all other requirements and specifications set forth in this RFP; and (2) acknowledges that some subjective judgments must be made by University during this RFP process.

1.7 Solicitation for Proposal and Proposal Preparation Costs

Proposer understands and agrees that (1) this RFP is a solicitation for proposals and University has made no representation written or oral that one or more agreements with University will be awarded under this RFP; (2) University issues this RFP predicated on University's anticipated requirements for Work, and University has made no representation, written or oral, that any particular scope of work will actually be required by University; and (3) Proposer will bear, as its sole risk and responsibility, any cost that arises from Proposer's preparation of a proposal in response to this RFP.

1.8 Proposal Requirements and General Instructions

- 1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.
- 1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of University.
- 1.8.3 University will not provide compensation to Proposer for any expenses incurred by the Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer. Proposer submits its proposal at its own risk and expense.
- 1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by University, at University's sole discretion.
- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFP. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to University, at University's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.
- 1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by University, in University's sole discretion.

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions in Specifications and Additional Questions (ref. **Section 5**). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

1.9.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 2 of APPENDIX ONE**) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by University, in its sole discretion.

1.9.3 Pricing and Delivery Schedule

Proposer must complete and return the Pricing and Delivery Schedule (ref. **Section 6**), as part of its proposal. In the Pricing and Delivery Schedule, the Proposer should describe in detail (a) the total fees for the entire scope of Work; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

University will not recognize or accept any charges or fees to perform Work that are not specifically stated in the Pricing and Delivery Schedule.

In the Pricing and Delivery Schedule, Proposer should describe each significant phase in the process of providing Work to University, and the time period within which Proposer proposes to be able to complete each such phase.

1.9.4 Proposer's General Questionnaire

Proposals must include responses to the questions in Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer should explain the reason when responding N/A or N/R.

1.9.5 Addenda Checklist

Proposer should acknowledge all Addenda to this RFP (if any) by completing, signing and returning the Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**) as part of its proposal. Any proposal received without a completed and signed Addenda Checklist may be rejected by University, in its sole discretion.

1.9.6 Submission

*Proposer should submit all proposal materials as instructed in **Section 3**. RFP No. (ref. **Title Page**) and Submittal Deadline (ref. **Section 2.1**) should be clearly shown (1) in the Subject line of any email transmitting the proposal, and (2) in the lower left-hand corner on the top surface of any envelope or package containing the proposal. In addition, the name and the return address of the Proposer should be clearly visible in any email or on any envelope or package.*

Proposer must also submit the HUB Subcontracting Plan (also called the HSP) as required by **Section 2.6**.

University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the HSP as required by **Section 2.6**. University will not accept proposals submitted by telephone or FAX transmission.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to University. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without University's consent, which will be based on Proposer's written request explaining and documenting the reason for withdrawal, which is acceptable to University.

SECTION 2

EXECUTION OF OFFER

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSER'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

2.1 Representations and Warranties. Proposer represents, warrants, certifies, acknowledges, and agrees as follows:

- 2.1.1 Proposer will furnish Work to University and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting Agreement.
- 2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
- 2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in providing Work.
- 2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform Work.
- 2.1.5 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances relating to performance of Work.
- 2.1.6 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.
- 2.1.7 Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
- 2.1.8 Proposer will maintain any insurance coverage required by the Agreement during the entire term.
- 2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
- 2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, UT SYSTEM, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.
- 2.1.11 Pursuant to §§[2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the Agreement may be applied directly to any debt or delinquency that Proposer 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.
- 2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on University that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.
- 2.1.13 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.
- 2.1.14 Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Proposer certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
- 2.1.15 Pursuant to Chapter 2274, *Texas Government Code (enacted by [SB 19, 87th Texas Legislature, Regular Session \(2021\)](#))*, Proposer 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 any contract or agreement resulting from this RFP against a firearm entity or firearm trade association. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.

- 2.1.16 Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 13, 87th Texas Legislature, Regular Session \(2021\)](#)), Proposer verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of any contract or agreement resulting from this RFP. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this verification is inaccurate.
- 2.1.17 Pursuant to Section 161.0085, *Texas Health and Safety Code* (enacted by [SB 968, 87th Texas Legislature, Regular Session \(2021\)](#)), Proposer 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 Proposer's business. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
- 2.2 No Benefit to Public Servants.** Proposer has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting Agreement, and Proposer may be removed from all proposer lists at University.
- 2.3 Tax Certification.** Proposer is not currently delinquent in the payment of any taxes due under [Chapter 171, Tax Code](#), or Proposer is exempt from the payment of those taxes, or Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting Agreement.
- 2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in [§15.01 et seq., Business and Commerce Code](#), or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 2.5 Authority Certification.** The individual signing this document and the documents made a part of this RFP, is authorized to sign the documents on behalf of Proposer and to bind Proposer under any resulting Agreement.
- 2.6 Child Support Certification.** Under [§231.006, Family Code](#), relating to child support, the individual or business entity named in Proposer's proposal is not ineligible to receive award of the Agreement, and any Agreements resulting from this RFP may be terminated if this certification is inaccurate.
- 2.7 Relationship Certifications.**
- No relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture, or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any member institution of UT System, on the other hand, other than the relationships which have been previously disclosed to University in writing.
 - Proposer has not been an employee of any member institution of UT System within the immediate twelve (12) months prior to the Submittal Deadline.
 - No person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. [§669.003, Government Code](#)).
 - All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before University enters into any Agreement resulting from this RFP with Proposer.
- 2.8 Compliance with Equal Employment Opportunity Laws.** Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.9 Compliance with Safety Standards.** All products and services offered by Proposer to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and the *Texas Hazard Communication Act*, [Chapter 502, Health and Safety Code](#), and all related regulations in effect or proposed as of the date of this RFP.
- 2.10 Exceptions to Certifications.** Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this Execution of Offer. All information will be subject to administrative review and approval prior to the time University makes an award or enters into any Agreement with Proposer.
- 2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification.** If Proposer will sell or lease computer equipment to University under any Agreement resulting from this RFP then, pursuant to [§361.965\(c\), Health & Safety Code](#), Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in [Chapter 361, Subchapter Y, Health & Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in [30 TAC Chapter 328, §361.952\(2\), Health & Safety Code](#), states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.
- 2.12 Conflict of Interest Certification.**
- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
 - Proposer's provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
 - Proposer has disclosed any personnel who are related to any current or former employees of University.
 - Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of University in connection with this RFP.
- 2.13 Not Used**

2.14. Proposer Certification Relating to Critical Infrastructure. Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 2116, 87th Texas Legislature, Regular Session \(2021\)](#), Proposer certifies (A) it is neither owned by nor is the majority of stock or other ownership interest of the Proposer held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a country designated by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the *Texas Government Code* (a "designated country") or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; and (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country. Proposer understands that the prohibitions set forth in the preceding sentence apply regardless of whether (1) Proposer's or its parent company's securities are publicly traded or (2) Proposer or its parent company is listed on a public stock exchange as either (a) a Chinese, Iranian, North Korean, or Russian company or (b) a company of a designated country. Proposer acknowledges any contract or agreement resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.

2.15 Proposer Compliance and Certification Relating to Cloud Computing Services. Section 2054.0593 of the *Texas Government Code* (enacted by [SB 475, 87th Texas Legislature, Regular Session \(2021\)](#)) requires the Texas Department of Information Resources (DIR) to establish and implement a state risk and authorization management program to provide a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services that process the data of Texas state agencies. DIR by rule shall prescribe (1) the categories and characteristics of cloud computing services subject to the state risk and authorization management program and (2) the requirements for certification through the program of vendors that provide cloud computing services. DIR shall evaluate vendors to determine whether a vendor qualifies for a certification issued by DIR reflecting compliance with program requirements. Texas state agencies must ensure that each contract for cloud computing services that the agency enters into or renews on or after January 1, 2022, complies with Section 2054.0593.

As a result, Proposer certifies that if selected it will comply with the requirements of such a state risk and authorization management program and maintain program compliance and certification throughout the term of any contract or agreement resulting from this RFP. Proposer understands and agrees that the University may not enter into or renew any contract or agreement resulting from this RFP with Proposer to purchase cloud computing services for the University that are subject to the state risk and authorization management program unless the Proposer demonstrates compliance with program requirements. Proposer acknowledges that any contract or agreement resulting from this RFP may be terminated and payment withheld if Proposer does not comply with this Section.

2.16 Proposer should complete the following information:

If Proposer is a Corporation, then State of Incorporation: _____

If Proposer is a Corporation then Proposer's Corporate Charter Number: _____

RFP No.: 742-22-193-2

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER §§[552.021](#) AND [552.023](#), *GOVERNMENT CODE*, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER [§559.004, GOVERNMENT CODE](#), INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Submitted and Certified By:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name/Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

SECTION 3

PROPOSER'S GENERAL QUESTIONNAIRE

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER §§552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER §559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Proposals must include responses to the questions contained in this Proposer's General Questionnaire. Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N/A (Not Applicable) or N/R (No Response), as appropriate. Proposer will explain the reason when responding N/A or N/R.

3.1 Proposer Profile

3.1.1 Legal name of Proposer company:

Address of principal place of business:

Address of office that would be providing service under the Agreement:

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

NOTE: If Proposer is a subsidiary, University prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.

3.1.2 State whether Proposer will provide a copy of its financial statements for the past two (2) years, if requested by University.

3.1.3 Proposer will provide a financial rating of the Proposer entity and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.

3.1.4 Is Proposer currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, Proposer will explain the expected impact, both in organizational and directional terms.

3.1.5 Proposer will provide any details of all past or pending litigation or claims filed against Proposer that would affect its performance under the Agreement with University (if any).

3.1.6 Is Proposer currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Proposer will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.

3.1.7 Proposer will provide a customer reference list of no less than three (3) organizations with which Proposer currently has contracts and/or to which Proposer has previously provided services (within the past five (5) years) of a type and scope similar to those required by University's RFP. Proposer will include in its customer reference list the customer's company name, contact person, telephone number, project description, length of business relationship, and background of services provided by Proposer.

- 3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of University? If yes, Proposer will explain.
- 3.1.9 Proposer will provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to [§231.006, Family Code](#), and will be used for the purpose of determining whether an owner of Proposer with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the *Texas Public Information Act* (ref. [Chapter 552, Government Code](#)), and other applicable law.

3.2 Approach to Work

- 3.2.1 Proposer will provide a statement of the Proposer's service approach and will describe any unique benefits to University from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in **Section 5.4** Scope of Work of this RFP.
- 3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of the Agreement.
- 3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:
- 3.2.3.1 Identification of tasks to be performed;
 - 3.2.3.2 Time frames to perform the identified tasks;
 - 3.2.3.3 Project management methodology;
 - 3.2.3.4 Implementation strategy; and
 - 3.2.3.5 The expected time frame in which the services would be implemented.
- 3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in this RFP. Proposer will include samples of reports and documents if appropriate.

3.3 General Requirements

- 3.3.1 Proposer will provide summary resumes for its proposed key personnel who will be providing services under the Agreement with University, including their specific experiences with similar service projects, and number of years of employment with Proposer.
- 3.3.2 Proposer will describe any difficulties it anticipates in performing its duties under the Agreement with University and how Proposer plans to manage these difficulties. Proposer will describe the assistance it will require from University.

3.4 Service Support

Proposer will describe its service support philosophy, how it is implemented, and how Proposer measures its success in maintaining this philosophy.

3.5 Quality Assurance

Proposer will describe its quality assurance program, its quality requirements, and how they are measured.

3.6 Miscellaneous

- 3.6.1 Proposer will provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to University. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.2 Proposer will provide details describing any unique or special services or benefits offered or advantages to be gained by University from doing business with Proposer. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.3 Does Proposer have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Proposer will provide a copy of the plan.

SECTION 4

ADDENDA CHECKLIST

Proposal of: _____
(Proposer Name)

To: University

RFP No.: 742-22-193-2

Ladies and Gentlemen:

The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (*initial blanks for any Addenda issued*).

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

SAMPLE AGREEMENT

AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Agreement between University and Contractor (**Agreement**) is made and entered into effective as of _____, 20 (**Effective Date**), by and between **The University of Texas Permian Basin**, an agency and institution of higher education established under the laws of the State of Texas (**University**), and _____, a _____ (**Contractor**), Federal Tax Identification Number _____

University and Contractor hereby agree as follows:

1. **Scope of Work.**

- 1.1 Contractor will perform the scope of the work (**Work**) in **Exhibit A**, Scope of Work, to the satisfaction of University and in accordance with the schedule (**Schedule**) for Work in **Exhibit B**, Schedule. Time is of the essence in connection with this Agreement. University will have no obligation to accept late performance or waive timely performance by Contractor.
- 1.2 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local, laws, statutes, regulations and ordinances (collectively, **Applicable Laws**), for the performance of Work.
- 1.3 Upon execution of this Agreement, all services previously performed by Contractor on behalf of University and included in the description of Work, will become a part of Work and will be subject to the terms and conditions of this Agreement.

2. **The Project.**

The Work will be provided in connection with _____ and all other related, necessary and appropriate services (**Project**).

3. **Time for Commencement and Completion.**

The term (**Initial Term**) of this Agreement will begin on the Effective Date and expire on _____, 20____. University will have the option to renew this Agreement for _____ (____) additional _____ (____) year terms (each a **Renewal Term**). The Initial Term and each Renewal Term are collectively referred to as the **Term**.

4. Contractor's Obligations.

- 4.1 Contractor will perform Work in compliance with (a) all Applicable Laws, and (b) the Board of Regents of The University of Texas System *Rules and Regulations* (<http://www.utsystem.edu/offices/board-regents/regents-rules-and-regulations>) the policies of The University of Texas System (<http://www.utsystem.edu/board-of-regents/policy-library>); and the institutional rules, regulations and policies of University() (collectively, **University Rules**). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the 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.
- 4.2 **[Option:** Contractor represents and warrants that (a) it will use commercially reasonable efforts to perform Work in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business, and (b) all Work to be performed will be of the quality that prevails among similar businesses engaged in providing similar services in major United States urban areas under the same or similar circumstances.] **[Alternate Option (Include if University wants to impose a higher standard for performance of Work.):** Contractor represents and warrants that (a) it will use its best efforts to perform Work in a good and workmanlike manner and in accordance with the highest standards of Contractor's profession or business, and (b) all Work to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- 4.3 Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.
- 4.4 University at all times is relying on Contractor's skill and knowledge in performing Work. Contractor represents and warrants that Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will not be in any way diminished by reason of any approval by University. Contractor will not be released from any liability by reason of any approval by University.
- 4.5 Contractor will, at its own cost, correct all material defects in Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in Work within a reasonable time, then University may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.
- 4.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of Work to be duly registered and licensed under all Applicable Laws. Contractor will assign to the Project a designated representative who will be responsible for administration and coordination of Work.

- 4.7 Contractor represents and warrants it is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; 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.
- 4.8 Contractor represents and warrants that neither the execution and delivery of this Agreement by Contractor nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision of its organizational documents; (b) result in the violation of any provision of any agreement by which it is bound; or (c) conflict with any order or decree of any court or other body or authority having jurisdiction.
- 4.9 **[Option (Include if Contractor will create software, training materials or other Work Material (ref. Section 7) protectable by copyright, trademark, patent or other intellectual property rights. Contact OGC with questions.):** Contractor represents and warrants that all of Contractor's Personnel contributing to Work Material (ref. **Section 7**) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of University) of Work Material produced by Personnel while performing services pursuant to this Agreement, and (ii) make all assignments necessary to effectuate such ownership. **Personnel** means any and all persons associated with Contractor who provide any work or work product pursuant to this Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors.
- 4.10 Contractor represents and warrants that: (i) Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor (for the benefit of University); (ii) University will receive free, good and clear title to all Work Material developed under this Agreement; (iii) Work Material and the intellectual property rights protecting Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of Work Material will not violate the rights of any third parties in Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.
- 4.11 Not Used.
- 4.12 Contractor, at its sole cost and expense, will comply with all requirements of [Subchapter C, Chapter 2252, Texas Government Code](#), including the provision of financial statements, payment statements derived from sales tax reports, and bonds.
- 4.12.1 In accordance with [§2252.062, Texas Government Code](#), Contractor will submit to University two (2) copies of Contractor's most recent financial statement prepared by a certified public accountant on the Effective Date.

4.12.2 In accordance with [§2252.063, Texas Government Code](#), Contractor will submit to University, no later than the 15th day after the end of each contract year, an annual payment statement derived from all of Contractor's sales tax reports for its operations during the preceding contract year. The annual payment statement must be certified by a certified public accountant licensed in the State of Texas. **Contract year** means that period of time beginning on the Effective Date and ending _____, 20__ and each twelve (12) month period thereafter, during the Term.

4.12.3 In accordance with [§2252.064, Texas Government Code](#), Contractor will provide University with a performance bond for each contract year during the Term. The amount of the performance bond for the first contract year during the Term will be equal to _____. **[Option (Include only if the performance bond amount should be adjusted each contract year):** Thereafter, the amount of the performance bond will be adjusted at the beginning of each contract year to _____. The performance bond will be issued by a surety company authorized to do business in the State of Texas and acceptable to University in all respects. The performance bond will be made payable to University and conditioned upon the prompt and faithful performance of Work and all of Contractor's other duties and obligations under this Agreement.

5. The Contract Amount.

- 5.1 University will pay Contractor for the performance of Work in accordance with **Exhibit C**, Payment for Services.
- 5.2 The Contract Amount includes all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of this Agreement.
- 5.3 University (a State agency) is exempt from Texas Sales & Use Tax on Work in accordance with [§151.309, Texas Tax Code](#) and [34 Texas Administrative Code \(TAC\) §3.322](#). Pursuant to 34 TAC §§3.322(c)(4) and (g)(3), this Agreement is sufficient proof of University's tax exempt status and University is not required to provide further evidence of its exempt status.

6. Payment Terms.

- 6.1 At least **[Option: ten (10)] [Alternate Option: _ (____)]** days before the end of each month during the Term, Contractor will submit to University an invoice covering Work performed for University to that date, in compliance with **Exhibit C**, Payment for Services. Each invoice will be accompanied by documentation that University may reasonably request to support the invoice amount. **[Option: University will pay Contractor for Work in accordance with [Chapter 2251, Texas Government Code](#).] [Alternate Option: University will, within twenty-one (21) days from the date it receives an invoice and supporting documentation, approve or disapprove the amount reflected in the invoice. If University approves the amount or any portion of the amount, University will promptly pay (each a **Progress Payment**) to Contractor the amount approved so long as Contractor is not in default under this Agreement. If University disapproves any invoice amount, University will give Contractor specific reasons for its disapproval in writing.**
- 6.2 Within **[Option: ten (10)] [Alternate Option: (_)]** days after final completion and acceptance of Work by University or as soon thereafter as possible, Contractor will submit a final invoice (**Final Invoice**) setting forth all amounts due and remaining unpaid to Contractor.

Upon approval of the Final Invoice by University, University will pay (**Final Payment**) to Contractor the amount due under the Final Invoice.

- 6.3 Notwithstanding any provision of this Agreement to the contrary, University will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if Contractor is in default under this Agreement.
- 6.4 The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount in **Exhibit C**, Payment for Services.
- 6.5 No payment made by University will (a) be construed to be final acceptance or approval of that part of the Work to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.
- 6.6 The acceptance of Final Payment by Contractor will constitute 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 for payment.
- 6.7 University will have the right to verify the details in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.
- 6.8 [Section 51.012, Texas Education Code](#), authorizes University to make payments through electronic funds transfer methods. Contractor agrees to accept payments from University through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor's banking information to University in writing on Contractor letterhead signed by an authorized representative of Contractor. Prior to the first payment, University will confirm Contractor's banking information. Changes to Contractor's bank information must be communicated to University in accordance with **Section 12.14** in writing at least thirty (30) days before the effective date of the change and must include an [IRS Form W-9](#) signed by an authorized representative of Contractor.
- 6.9 **[Option (Include if University is entitled to a prompt payment discount.):** Notwithstanding any other provision of this Agreement, University is entitled to a discount of_% (**Prompt Payment Discount**) off of each payment that University submits within__days after University's receipt of Contractor's invoice for that payment.

7. Ownership and Use of Work Material.

- 7.1 All tools, software, programs, drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with Work (collectively, **Work Material**), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.
- 7.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to Work Material.
- 7.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use Work Material for the completion of Work or otherwise. University may, at all times, retain the originals of Work Material. Work Material will

not be used by any person other than University on other projects unless expressly authorized by University in writing.

- 7.4 Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.
- 7.5 **[Option (Include if Contractor will create software, training materials or other Work Material (ref. Section 7) protectable by copyright, trademark, patent or other intellectual property rights. Contact OGC with questions.):** All title and interest in Work Material will vest in University and will be deemed to be work made for hire and made in the course of Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor irrevocably assigns, conveys and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.
- [Option (Include if Contractor objects to ownership of all Work Material by University. Contact OGC with questions.):**
- 7.6 Contractor IP is the sole property of Contractor (or its licensor) and Contractor (or its licensor) will at all times retain sole and exclusive title to and ownership of Contractor IP. Contractor grants University a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to use Contractor IP in connection with the Work and Contractor's services related to the Work. "**Contractor IP**" means all tools, software and programs owned by Contractor (licensed to Contractor by a third party licensor) that (1) existed prior to the Effective Date and the commencement of the Work; (2) are not related to the Work or to Contractor's services in connection with the Work; or (3) were created by Contractor (or its licensor) totally separate from the Work or Contractor's services in connection with the Work.
7. University grants Contractor a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to the Work Product Improvements to Contractor IP. "**Work Product Improvements to Contractor IP**" means Work Material comprising an improvement, enhancement or modification to Contractor IP, whether or not patentable, copyrightable as a derivative work, or otherwise protectable as intellectual property.

8. **Default and Termination**

- 8.1 In the event of a material failure by a party to this Agreement to perform in accordance with its terms (**default**), the other party may terminate this Agreement upon **[Option: fifteen (15)]** **[Alternate Option: ____ (____)]** days' written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the **[Option: fifteen-day (15-day)]** **[Alternate Option: ____-day (____-day)]** period. **[Note: Pursuant to [§2261.101, Texas Government Code](#), consider whether an additional remedies or sanctions schedule would be beneficial and appropriate in this Agreement. If so, please contact OGC for assistance.**

- 8.2 University may, without cause, terminate this Agreement at any time upon giving **[Option: seven (7)] [Alternate Option: ()]** days' advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice, that could have been avoided or mitigated by Contractor.
- 8.3 Termination under **Sections 8.1 or 8.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 8.4 If Contractor fails to cure any default within **[Option: fifteen (15)] [Alternate Option: ()]** days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with University's curative actions.
- 8.5 **[Option (Include if University will make pre-payments to Contractor under this Agreement.):** In the event that this Agreement is terminated, then within **[Option: thirty (30)] [Alternate Option: ()]** 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.] **[Note: Section 50 of Article 3 of the Texas Constitution prohibits the State of Texas or its agencies from lending the credit of the State. "Lending the credit of the State" has been broadly construed to include the making of payment prior to receipt of goods or complete performance of services. *Rhoads Drilling co. v. Allred*, 70 S.W. 2d 576, 582 (Tex. 1934); Attorney General Opinions WW-790 (1960) and WW-153 (1957). Nevertheless, according to relevant Attorney General Opinions MW-373 (1981) and JM-1229 (1990), pre-payments for goods and services may be made by the State of Texas so long as the pre-payment serves a public purpose and the State maintains controls over the transaction, contractual or otherwise, to ensure that the public purpose is actually achieved.**

Based on Texas law related to pre-payments, the representative of U.T. with delegated authority to execute contracts containing pre-payment provisions, should analyze the transaction and make a determination regarding whether the facts lead to the conclusion that (1) there is in fact a public purpose for any pre-payments required by the contract and (2) there are sufficient controls over the transaction, contractual or otherwise, to ensure that the public purpose is actually achieved. This determination should be documented in a memorandum to U.T.'s file by setting forth the facts which lead to a conclusion of public purpose and sufficient controls to ensure the public purpose is achieved.

9. Indemnification

- 9.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND **[Option (Delete only if contracting party is UT System.): , THE UNIVERSITY OF TEXAS SYSTEM, AND]** 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, **[Option (Delete when Work is capable of being re-characterized as “construction” even if University does not believe Work is a “public work.”): 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. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- 9.2 IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. 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.

10. Relationship of the Parties.

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University. Contractor will not bind nor attempt to bind University to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers’ compensation insurance.

11. Insurance.

- 11.1 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-:VII or better, and in amounts not less than the following minimum limits of coverage:
- 11.1.1 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 - Each Employee | \$1,000,000 |
| Employers Liability - 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.

11.1.2 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

The required Commercial General Liability policy will be issued on a form that insures Contractor's and subcontractor's liability for bodily injury (including death), property damage, personal, and advertising injury assumed under the terms of this Agreement.

11.1.3 Not used

11.1.4 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.

11.1.7 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.

11.1.9 Cyber Liability Insurance with limits of not less than \$10,000,000 for each wrongful act. This policy must cover:

- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
- Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Liability for technological products and services;
- PCI fines, fees, penalties and assessments;
- Cyber extortion payment and response costs;
- First and Third Party Business Interruption Loss resulting from a network security failure;
- Liability for technological products and services;
- Costs of restoring, updating or replacing data; and
- Liability losses connected to network security, privacy, and media liability.

If this policy is written on a claims-made basis, (a) the "retroactive date" must be prior to

the commencement of Work under this Agreement; and (b) if this policy is cancelled, terminated or non-renewed at any time during the Term, Contractor will purchase an "extended reporting period" for at least a period of two (2) years beyond the termination or expiration of the Term.

Contractor's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

11.2 Contractor will deliver to University:

11.2.1 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.

11.2.1.1 **All insurance policies** (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System, and University as Additional Insureds for liability caused in whole or in part by Contractor's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

11.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System, and University. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System and University. No policy will be canceled until after thirty (30) days' unconditional written notice to University. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to 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 11**.

11.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

11.2.1.4 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name:
Address:
Facsimile Number:
Email Address:

- 11.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or The University of Texas System. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing, except as provided in this **Section 11.3**.

11.3.1 Professional Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of the policy.

11.3.2 Directors and Officers Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of the policy.

12. Miscellaneous.

- 12.1 **Assignment and Subcontracting.** Except as specifically provided in **Exhibit E**, Historically Underutilized Business Subcontracting Plan,] 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.
- 12.2 **Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Contractor certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 12.3 **Tax Certification.** If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#), then Contractor certifies it is not currently delinquent in the payment of any taxes due under Chapter 171, Contractor is exempt from the payment of those taxes, or Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 12.4 **Payment of Debt or Delinquency to the State.** Pursuant to [§§2107.008 and 2252.903, Texas Government Code](#), Contractor agrees any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency Contractor owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.
- 12.5 **Loss of Funding.** Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If Legislature fails to appropriate or allot necessary funds, or Board fails to allocate necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond University's control.
- 12.6 **Entire Agreement; Modifications.** This Agreement (including all exhibits, schedules, supplements and other attachments (collectively, **Exhibits**)) 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 its subject matter. 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. All Exhibits are attached to this Agreement and incorporated for all purposes.

- 12.7 **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (**force majeure occurrence**). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide research and other mission critical services during the occurrence.
- 12.8 **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.
- 12.9 **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.
- 12.10 **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.
- 12.11 **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.: Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Family Educational Rights and Privacy Act, [20 United States Code \(USC\) §1232g](#) (**FERPA**) are addressed in **Section 12.42**.

Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the [Health Insurance Portability and Accountability Act](#) and [45 Code of Federal Regulations \(CFR\) Part 160](#) and [subparts A and E of Part 164](#) (collectively, **HIPAA**) are addressed in **Section 12.26.]** 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 the National Institute of Standards and Technology and the Center for Internet Security, as well as the Payment Card Industry Data Security Standards]) that are 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 and the terms of this Agreement; and (4) comply with University Rules regarding access to and use of University's computer systems, including UTS165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>. 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.

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**). However, it is expressly agreed that University will not provide to Contractor, and Contractor will never seek to access, any University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the *Texas Public Information Act*, [Chapter 552, Texas Government Code](#), including “directory information” of any student who has opted to prohibit the release of their “directory information” as that term is defined under the *Family Educational Rights and Privacy Act*, [20 USC §1232g](#) (FERPA) and its implementing regulations. **[Option (Include if University is a HIPAA Covered Entity and University Records are subject to HIPAA.):** Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Health Insurance Portability and Accountability Act and [45 CFR Part 160](#) and [subparts A and E of Part 164](#) (collectively **HIPAA**) are addressed in **Section 12.26.]** 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 the National Institute of Standards and Technology and the Center for Internet Security **[Option (Include if Section 12.40 related to Payment Card Industry Data Security Standards is not include in this Agreement.):**, as well as the Payment Card Industry Data Security Standards]) 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 and the terms of this Agreement; and (4) comply with University Rules regarding access to and use of University’s computer systems, including UTS 165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>. 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.

12.11.1 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.

12.11.2 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.

12.11.3 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 12.11**.

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

12.11.5 **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](#) 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.

12.11.6 **Termination.** In addition to any other termination rights 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 in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.

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

12.12 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

12.13 **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments will be available to University or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless University otherwise instructs Contractor in writing.

12.14 **Notices.** Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications required or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is provided below), or email (to the extent an email address is provided below) as indicated 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 provided below) or email (to the extent an email address is provided below), when received:

If to University:

Fax: _____
Email: _____
Attention: _____

with copy to:

Fax: _____
Email: _____
Attention: _____

If to Contractor:

Fax: _____
Email: _____
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.

- 12.15 **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.
- 12.16 **State Auditor's Office.** Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. §§[51.9335\(c\)](#), [73.115\(c\)](#) and [74.008\(c\)](#), *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
- 12.17 **Limitation of Liability.** EXCEPT FOR UNIVERSITY'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UNIVERSITY, OR 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.
- 12.18 **Survival of Provisions.** 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 6.7, 9, 12.5, 12.9, 12.10, 12.11, 12.13, 12.16, 12.17, 12.19 and 12.21.**
- 12.19 **Breach of Contract Claims.** To the extent that [Chapter 2260, Texas Government Code](#), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by University 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 University will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims. The parties specifically agree (i) neither 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.

- 12.19.1.1 If the parties are unable to resolve their disputes under **Section 12.19.1.1**, 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.
- 12.19.1.2 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.
- 12.19.2 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.
- 12.19.3 University and Contractor agree that any periods provided in this Agreement for notice and cure of defaults are not waived.
- 12.20 **Undocumented Workers.** The *Immigration and Nationality Act* ([8 USC §1324a](#)) (**Immigration Act**) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form \(I-9 Form\)](#) as the document to be used for employment eligibility verification ([8 CFR §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 8**. 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.
- 12.21 **Limitations.** THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING 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, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 12.22 **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy at University's Standards of Conduct Guide at <https://www.utpb.edu/university-offices/compliance-and-accommodations/conflict-of-interest/index> and applicable state ethics laws and rules at https://www.utpb.edu/university-offices/operating-procedures/docs/part_i.pdf. 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.

12.23 Not used

12.24 **Enforcement.** Contractor agrees and acknowledges that University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing Work. Contractor's services provide a peculiar value to University. University cannot be reasonably or adequately compensated in damages for the loss of Contractor's services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that University will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

12.25 **Access by Individuals with Disabilities.** Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to University all amounts University paid under this Agreement. Contractor will provide all assistance and cooperation necessary for performance and documentation of accessibility testing, planning, and execution criteria conducted by University or University's third party testing resources, as required by [1 TAC §213.38\(g\)](#).

12.26 **[Option (If University is a HIPAA covered entity, use in all contracts under which Contractor will access University Records subject to HIPAA.): HIPAA Compliance.** University is a HIPAA Covered Entity and some of the information Contractor receives, maintains or creates for or on behalf of University may constitute Protected Health Information (**PHI**) that is subject to HIPAA. Before Contractor may receive, maintain or create any University Records subject to HIPAA, Contractor will execute the HIPAA Business Associate Agreement (**BAA**) in **EXHIBIT D**, HIPAA Business Associate Agreement. To the extent that the BAA conflicts with any term contained in this Agreement, the terms of the BAA will control.

Contractor will use good faith efforts to subcontract work performed under this Agreement in accordance with the Historically Underutilized Business Subcontracting Plan (**HSP**) (ref. **Exhibit E**). Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Agreement, in whole or in part. This Agreement is subject to [34 TAC §20.285](#). Contractor will comply with all of its duties and obligations under [34 TAC §20.285](#). In addition to other rights and remedies, University may exercise all rights and remedies authorized by [34 TAC §20.285](#).

Contractor agrees to use good faith efforts to subcontract Work in accordance with the Historically Underutilized Business Subcontracting Plan (**HSP**) (ref. **Exhibit E**). 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.

12.26.1 **Changes to the HSP.** If at any time during the Term, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with [34 TAC §20.285](#); (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 12.6** to replace the HSP with the revised subcontracting plan.

12.26.2 **Expansion of Work.** If University expands the scope of Work through a change order or any other amendment, University will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial solicitation for Work. 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 (a) this Agreement may be amended to include the additional Work; or (b) Contractor may perform the additional Work. 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 under **Section 8** and will be subject to any remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §20.285](#). University may report nonperformance under this Agreement to the SPSS in accordance with [34 TAC §§20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#).

12.27

Each individual who is assigned to perform Work 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 Work under this Agreement. Prior to commencing Work, Contractor will (1) provide University with a list (**List**) of all individuals who may be assigned to perform Work on University's premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Contractor will determine on a case-by-case basis whether each individual assigned to perform Work 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 List each time there is a change in the individuals assigned to perform Work on University's premises.

Prior to commencing performance of Work 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 List.

12.28 **Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance.** Contractor certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. A breach of this certification is a violation of the Equal Opportunity

clause. **Segregated facilities** means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Contractor further agrees that, except where it has contracts prior to the award with subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Contractor will retain the certifications for each one of its subcontractors in Contractor's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on

Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Contractor understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in [18 USC §1001](#).

- 12.29 **Debarment.** Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (U.S.) federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.sam.gov/>) issued by the U.S. General Services Administration. "**Principals**" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to University if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when University executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to University, University may terminate this Agreement for default by Contractor.
- 12.30 **Office of Inspector General Certification.** Contractor acknowledges that University is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at University's premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General (**OIG**) to work on site at University's premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the

time the employees, representatives, agents, or subcontractors are assigned to work on site at University's premises or facilities. Contractor acknowledges that University will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at University's premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: <http://exclusions.oig.hhs.gov/>

- 12.31 **Access to Documents.** To the extent applicable to this Agreement, in accordance with §1861(v)(I)(i) of the Social Security Act ([42 USC §1395x](#)) as amended, and the provisions of [42 CFR §420.300 et seq](#), Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.
- 12.32 **Affirmative Action. Exhibit** , Affirmative Action Compliance Program, contains a writtencopy of Contractor's Civil Rights "*Affirmative Action Compliance Program*," or if Contractor isn't required to have such a written program, the reason Contractor is not subject to such requirement.
- 12.33 **OSHA Compliance.** To the extent applicable to the services to be performed under this Agreement, Contractor represents and warrants, that all articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and its regulations in effect or proposed as of the date of this Agreement.
- 12.34 **Discrimination Prohibited.** UNIVERSITY AND CONTRACTOR WILL ABIDE BY THE REQUIREMENTS OF [41 CFR §§60-1.4\(A\)](#), [60-300.5\(A\)](#) AND [60-741.5\(A\)](#) (COLLECTIVELY, **REGULATIONS**). THE REGULATIONS (1) PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND (2) PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. MOREOVER, THE REGULATIONS REQUIRE THAT UNIVERSITY AND CONTRACTOR TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT, INDIVIDUALS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, PROTECTED VETERAN STATUS OR DISABILITY.
- 12.35 **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.

- 12.36 **EIR Environment Specifications. Exhibit G**, Environment Specifications, establishes specifications, representations, warranties and agreements related to the environment specifications of EIR that Contractor is providing to University under this Agreement. The specifications, representations, warranties and agreements in Exhibit G, Environment Specifications, are binding on Contractor. Contractor agrees to perform Work in compliance with Exhibit G, Environment Specifications.
- 12.38 **Security Characteristics and Functionality of Contractor's Information Resources. Exhibit H**, Security Characteristics and Functionality of Contractor's Information Resources, establishes specifications, representations, warranties and agreements related to the products and services Contractor is providing to University under this Agreement. The specifications, representations, warranties and agreements in Exhibit H, Security Characteristics and Functionality of Contractor's Information Resources, are binding on Contractor. Contractor agrees to perform Work in compliance with Exhibit H, Security Characteristics and Functionality of Contractor's Information Resources.
- 12.39 **External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Agreement (**External Terms**). External Terms are null and void and will have no effect under this Agreement, even if University or its employees, contractors, or agents express assent or agreement to External Terms. External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.
- 12.40 **FERPA Compliance.** Some of the University Records Contractor receives, creates or maintains for or on behalf of University constitute **Education Records** (as defined by [FERPA](#)), or **Personally Identifiable Information from Education Records** (as defined by [FERPA](#)) (collectively, **FERPA Data**). Before Contractor may access, create or maintain any of University's FERPA Data, Contractor must execute **EXHIBIT I**, FERPA Confidentiality and Security Addendum. **EXHIBIT I**, FERPA Confidentiality and Security Addendum, contains terms required by University to ensure that Contractor complies with FERPA (including the requirements of [34 CFR §99.33\(a\)](#)) and University Rules related to FERPA, including (i) a description of all FERPA Data subject to this Agreement, and (ii) recognition that University retains the right to control Contractor's access, use, and disclosure of all FERPA Data. Except to the extent **Section 12.11** conflicts with **EXHIBIT I**, FERPA Confidentiality and Security Addendum, Contractor will comply with **Section 12.11** in connection with all FERPA Data. To the extent that **EXHIBIT I**, FERPA Confidentiality and Security Addendum, conflicts with any term contained in this Agreement, the terms of **EXHIBIT I**, FERPA Confidentiality and Security Addendum, will control.
- 12.43 **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.

- 12.44 **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. **[Note 1: [Subchapter F, Chapter 2252, Texas Government Code](#), requires University to implement a process to compare Contractor's name(s) to the various lists designated in Section 2252.152, Government Code, before execution of this Agreement.]**

[Note 2: This Section only applies to a contract with a for-profit entity. [Section 2252.151\(1\), Texas Government Code](#), defines "company" to have the meaning assigned by Section 806.001, Texas Government Code. [Senate Bill 253](#) (85th Regular Session) moved Section 806.001 to [Section 2270.0001, Texas Government Code](#). Section 2270.0001 defines "company" as a for-profit entity.

- 12.45 This Agreement may be translated into various languages and executed by the parties; however, the English language version is the original and controlling agreement, and all other language versions are translations for information purposes only. If the terms and conditions of the original English language Agreement conflict with those in any foreign language translation of this Agreement, the original English language Agreement will prevail.

- 12.46 **General Data Protection Regulation (GDPR) Applicability.** Some of the University Records Contractor receives, creates or maintains for or on behalf of University constitute **Personal Information or Data** (as defined by the GDPR). Before Contractor may access, create or maintain such Data, Contractor must execute **EXHIBIT J**, GDPR Data Protection Addendum. Except as otherwise provided by the GDPR Data Protection Addendum included as **EXHIBIT J** Contractor agrees to provide University with a copy of the Contractor's GDPR privacy notice which complies with GDPR requirements, including but not limited to detailing the gathering and use of data, an individual's rights under GDPR, and breach notification information. Contractor will provide University with any information necessary to allow University to fulfill its responsibilities as a data controller, as that term is defined by the GDPR, when responding to an inquiry from a data subject, as that term is defined by the GDPR. Such information shall be provided to University no later than 5 days from the day Contractor or University learn of a request for information from a data subject. Except to the extent **Section 2 (b)** conflicts with **EXHIBIT J**, GDPR Data Protection Addendum, Contractor will comply with **Section 2(b)** in connection with all Data subject to GDPR.

- 12.47 **Cybersecurity Training Program.** If Contractor and/or its subcontractors, officers, or employees will have an account on a state computer system (for example, an account to an application, database, or network), then pursuant to [Section 2054.5192, Texas Government Code](#), Contractor and its subcontractors, officers, and employees must complete a cybersecurity training program certified under [Section 2054.519, Texas Government Code](#) and selected by the University. The cybersecurity training program must be completed by Contractor and its subcontractors, officers, and employees during the term and any renewal period of this Agreement. Contractor shall verify completion of the program to the University.

- 12.48 **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\(7\), 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.

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. Such notice will also advise Contractor that University may terminate this Agreement without further obligation to Contractor if (a) Contractor does not cure the violation on or before the 10th business day after the date the University provides the notice, (b) the University determines that Contractor has intentionally or knowingly failed to comply with a requirement of that Subchapter J, and (c) the University determines that Contractor has not taken adequate steps to ensure future compliance with the requirements of Subchapter

J. For purposes of the above, Contractor has taken adequate steps to ensure future compliance with Subchapter J if: (1) Contractor produces contracting information requested by the University that is in the custody or possession of Contractor not later than the 10th business day after the date the University makes the request and (2) Contractor establishes a records management program to enable Contractor to comply with Subchapter J.

12.49 Contractor Verification Regarding Discrimination Against Firearm Entities or Trade Associations. Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 19, 87th 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. **[Note: This provision should only be included in a contract entered into on or after 9/1/21 that (1) is not with a Contractor that is a sole-source provider, (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds, and (3) is with a for-profit entity, not including a sole proprietorship, that has 10 or more full time employees. However, this provision should not be included in a contract if (A) the University did not receive any bids from a company that is able to provide the written verification required above or (B) it is a contract exempt from compliance under Section 2274.003 of the *Texas Government Code* (applicable to contracts entered into in connection with or relating to the issuance, sale, or delivery of notes under Subchapter H, Chapter 404, *Texas Government Code* or the administration of matters related to the notes, including the investment of note proceeds, if determined to be exempt by the Texas Comptroller in its sole discretion and in compliance with the requirements of that statute.)**

12.50 Contractor Verification Regarding Boycotting Energy Companies. Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 13, 87th 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.

12.51 Contractor Certification Regarding COVID-19 Vaccination. Pursuant to Section 161.0085, *Texas Health and Safety Code* (enacted by [SB 968, 87th 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.

Pursuant to Chapter 2274, *Texas Government Code* (enacted by [SB 2116, 87th Texas Legislature, Regular Session \(2021\)](#)), Contractor certifies (A) it is neither owned by nor is the majority of stock or other ownership interest of the Contractor held or controlled by (i) individuals who are citizens of China, Iran, North Korea, Russia, or a country designated

by the Governor of Texas as a threat to critical infrastructure under Section 2274.0103 of the *Texas Government Code* (a “designated country”) or (ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; and (B) it is not headquartered in China, Iran, North Korea, Russia, or a designated country. Contractor understands that the prohibitions set forth in the preceding sentence apply regardless of whether (1) Contractor’s or its parent company’s securities are publicly traded or (2) Contractor or its parent company is listed on a public stock exchange as either (a) a Chinese, Iranian, North Korean, or Russian company or (b) a company of a designated country. Contractor acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate

Section 2054.0593 of the *Texas Government Code* (enacted by [SB 475, 87th Texas Legislature, Regular Session \(2021\)](#) requires the Texas Department of Information Resources (DIR) to establish and implement a state risk and authorization management program to provide a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services that process the data of Texas state agencies. DIR by rule shall prescribe (1) the categories and characteristics of cloud computing services subject to the state risk and authorization management program and (2) the requirements for certification through the program of vendors that provide cloud computing services. DIR shall evaluate vendors to determine whether a vendor qualifies for a certification issued by DIR reflecting compliance with program requirements. Texas state agencies must ensure that each contract for cloud computing services that the agency enters into or renews on or after January 1, 2022, complies with Section 2054.0593.

As a result, Contractor must comply with the requirements of such a state risk and authorization management program and maintain program compliance and certification throughout the term of this Agreement. Contractor understands and agrees that the University may not enter into or renew a contract with Contractor to purchase cloud computing services for the University that are subject to the state risk and authorization management program unless Contractor demonstrates compliance with program requirements. Contractor acknowledges this Agreement may be terminated and payment withheld if Contractor does not comply with this Section.

University and Contractor have executed and delivered this Agreement to be effective as of the Effective Date.

THE UNIVERSITY OF TEXAS PERMIAN BASIN

CONTRACTOR:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attest: _____
Corporate Secretary

- Attach:**
EXHIBIT A – Scope of Work
EXHIBIT B – Schedule
EXHIBIT C – Payment for Services
EXHIBIT D – HIPAA Business Associate Agreement
EXHIBIT E – HUB Subcontracting Plan
EXHIBIT F – Affirmative Action Compliance Program
EXHIBIT G – Environment Specifications
EXHIBIT H – Security Characteristics and Functionality of Contractor’s Information Resources
EXHIBIT I – FERPA Confidentiality and Security Addendum
EXHIBIT J – GDPR Data Protection Addendum

EXHIBIT A

SCOPE OF WORK

Note: Provide a detailed description and break-down of all tasks Contractor is to perform and technical standards for the tasks, if appropriate.

EXHIBIT B

SCHEDULE

[Note: Describe specific time deadlines and due dates for each phase of Work and, if appropriate, for Work as a whole.

EXHIBIT C

PAYMENT FOR SERVICES

SERVICE FEES:

Notwithstanding the foregoing, the cumulative amount of Service Fees remitted by University to Contractor will not exceed \$ _____ (**Fee Cap**) without the prior written approval of University. In addition, total fees for each Phase of Work will not exceed the following specified amounts without the prior written approval of University:

If University submits, in advance, a written request for additional services not contemplated or reasonably inferred by this Agreement, Contractor will be paid for actual hours incurred by Contractor's personnel directly and solely in support of the additional services at the Rates provided above.

[Note:

AIR TRAVEL AND RENTAL CAR

At this time, Contractor may not book air travel or rental car directly with travel vendors and obtain the State rates. If the UT institution books air travel and rental car for Contractor and pays the travel vendor directly (direct bill to UT), then the UT institution will receive the State rate for Contractor's airfare and rental car.

HOTEL RESERVATIONS

State Hotel Rates: A hotel under contract with the State may, at the hotel's discretion, offer the State rate for Contractor travel. The hotel, at the hotel's discretion, may permit the Contractor to book and pay the reservation or may require the UT institution to book and pay the reservation (direct bill to UT). The UT institution should contact the hotel to ask if (1) the hotel honors the State rate for Contractor travel, and (2) the hotel requires UT to book and pay the reservation (direct bill to UT).

UT Negotiated Hotel Rates: The UT institution may obtain the UT negotiated hotel rates (when available) for Contractor travel. The UT institution should contact the hotel to confirm the reservation and ask if the hotel requires UT to pay for the reservation (direct bill to UT).

CANCELLATION CHARGES

Be aware that if UT institutions book travel for Contractor, then any cancellation charges will be charged to the UT institution.]

EXPENSES AND DISBURSEMENTS: Contractor will be reimbursed without mark-up for reasonable expenses (including meals, rental car or mileage, coach class airfare, and lodging) validly incurred directly and solely in support of the Project and approved by University in advance. Provided, however, Contractor agrees and acknowledges that Contractor will be subject to the then-current Travel Reimbursement Rates promulgated by the Comptroller of Public Accounts for the State of Texas at <https://fmxcpa.state.tx.us/fm/travel/travelrates.php> with regard to meals, mileage, **[Option: rental car]** **[Option: , airfare,]** **[Option: lodging]** and all other expenses related to travel **[Option: , except [Option: rental car], [Option: airfare] and [Option: lodging]].** **[Option: Except as provided in this Agreement,]** Contractor agrees and acknowledges that Contractor will not be reimbursed by University for expenses that are prohibited or that exceed the allowable amounts provided in the then-current Travel Reimbursement Rates. As a condition precedent to receiving reimbursement for expenses and disbursements, Contractor will submit to University receipts, invoices, and other documentation as requested by University.

Notwithstanding the foregoing, reimbursement for expenses and disbursements will not exceed a maximum of \$_____ (**Expense Cap**) without the prior written approval of University.

The Fee Cap and the Expense Cap are sometimes collectively referred to as the **Contract Amount**.

EXHIBIT D

HIPAA BUSINESS ASSOCIATE AGREEMENT

EXHIBIT E

HUB SUBCONTRACTING PLAN

<https://comptroller.texas.gov/purchasing/vendor/hub/forms.php#hsp>

EXHIBIT F

AFFIRMATIVE ACTION COMPLIANCE PROGRAM

EXHIBIT G

ENVIRONMENT SPECIFICATIONS

EXHIBIT H

**SECURITY CHARACTERISTICS AND FUNCTIONALITY OF
CONTRACTOR'S INFORMATION RESOURCES**

EXHIBIT I

FERPA CONFIDENTIALITY AND SECURITY ADDENDUM

FERPA CONFIDENTIALITY AND SECURITY ADDENDUM

This FERPA Confidentiality and Security Addendum (**Addendum**) is made and entered into effective as of [] (**Effective Date**) by and between **The University of Texas** [], a state agency and institution of higher education established under the laws of the State of Texas (**University**) and [] (**Contractor**), (collectively, **Parties**). The purpose of this Addendum is to provide the terms under which Contractor is required to maintain the confidentiality and security of any and all University records subject to the Family Educational Rights and Privacy Act, [20 United States Code §1232g](#) (**FERPA**) which Contractor will create, receive, or maintain on behalf of University pursuant to [Identify underlying contract to which the Addendum is attached.](**Underlying Agreement**).

1. **FERPA**. The Parties understand and agree that:

- 1.1 As part of the work (**Work**) that Contractor will provide pursuant to the Underlying Agreement, Contractor is expected to create, receive or maintain, records or record systems from or on behalf of University that (a) are subject to FERPA or (b) contain personally identifiable information from "Education Records" as defined by and subject to FERPA (collectively, **FERPA Records**) namely: **[Insert description of the types or categories of records subject to FERPA to be created, accessed and or maintained by Contractor.]** FERPA Records include all data in any form whatsoever, including electronic, written and machine readable form.
- 1.2 Notwithstanding any other provision of the Underlying Agreement, this Addendum or any other agreement, all FERPA Records created, received or maintained by Contractor pursuant to the Underlying Agreement will remain the sole and exclusive property of University.

2. **FERPA Compliance**. In connection with all FERPA Records that Contractor may create, receive or maintain on behalf of University pursuant to the Underlying Agreement, Contractor is designated as a University Official with a legitimate educational interest in and with respect to such FERPA Records, only to the extent to which Contractor (a) is required to create, receive or maintain FERPA Records to carry out the Underlying Agreement, and (b) understands and agrees to all of the following terms and conditions *without reservation*:

- 2.1 **Prohibition on Unauthorized Use or Disclosure of FERPA Records:** Contractor will hold University FERPA Records in strict confidence. Contractor will not use or disclose FERPA Records received from or on behalf of University, including any FERPA Records provided by a University student directly to Contractor, except as permitted or required by the Underlying Agreement or this Addendum.
- 2.2 **Maintenance of the Security of FERPA Records:** Contractor will use the administrative, technical and physical security measures, including secure encryption in the case of electronically maintained or transmitted FERPA Records, approved by University and that are at least as stringent as the requirements of UT System Information and Resource Use & Security Policy, UTS165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>, to preserve the confidentiality and security of all FERPA Records received from, or on behalf of University, its students or any third party pursuant to the Underlying Agreement.
- 2.3 **Reporting of Unauthorized Disclosures or Misuse of FERPA Records and Information:** Contractor, within one (1) day after discovery, will report to University any

use or disclosure of FERPA Records not authorized by this Addendum. Contractor's report will identify: (i) the nature of the unauthorized use or disclosure, (ii) the FERPA Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure. Contractor will provide such other information, including written reports, as reasonably requested by University. For purposes of this **Section 2.3**, an unauthorized disclosure or use includes any access or use of an "Education Record" (as defined by FERPA) by a Contractor employee or agent that the employee or agent does not require to perform Work or access by any employee or agent that does not involve the provision of Work.

- 2.4 **Right to Audit:** If University has a reasonable basis to believe that Contractor is not in compliance with the terms of this Addendum, University may audit Contractor's compliance with FERPA as Contractor's compliance relates to University's FERPA Records maintained by Contractor.
- 2.5 **Five Year Exclusion for Improper Disclosure of Education Records.** Under the federal regulations implementing FERPA, improper disclosure or redisclosure of personally identifiable information from University's "Education Records" (as defined by FERPA) by Contractor or its employees or agents may result in Contractor's complete exclusion from eligibility to contract with University for at least five (5) years.
3. **Return [Option: or Secure Destruction] of FERPA Records.** Contractor agrees that no later than 30 days after expiration or termination of the Underlying Agreement or this Addendum for any reason, or within thirty (30) days after University's written request, Contractor will halt all access, use, creation, or processing of FERPA Records and will return to University **[Option: or Securely Destroy]** all FERPA Records, including any copies created by Contractor or any subcontractor; and Contractor will certify in writing to University that all FERPA records have been returned to University **[Option: or Securely Destroyed]**. **[Option: Secure Destruction, Securely Destroy and Securely Destroyed]** mean shredding, erasing or otherwise modifying a record so as to make it unreadable or indecipherable.]
4. **Disclosure.** Contractor will restrict disclosure of FERPA Records solely to those employees, subcontractors, or agents of Contractor that have a need to access the FERPA Records in order for Contractor to perform its obligations under the Underlying Agreement or this Addendum. If Contractor discloses any FERPA Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with restrictions and obligations that align with the restrictions and obligations imposed on Contractor by the Underlying Agreement and this Addendum, including requiring each subcontractor or agent to agree to the same restrictions and obligations in writing.
5. **Termination.** This Addendum will remain in effect until the earlier of (a) expiration or termination of the Underlying Agreement, or (b) the date University terminates this Addendum by giving Contractor sixty (60) days' written notice of University's intent to terminate. **Sections 2, 3, 4, and 6** of this Addendum will survive expiration or termination of the Underlying Agreement and this Addendum.
6. **Breach.** In the event of a breach, threatened breach or intended breach of this Addendum by Contractor, University (in addition to any other rights and remedies available to University at law or in equity) will be entitled to preliminary and final injunctions, enjoining and restraining such breach, threatened breach or intended breach.

7. **Governing Law.** The validity, construction, and performance of this Addendum are governed by the laws of the State of Texas, and suit may be brought in **ECTOR** County, Texas to enforce the terms of this Addendum.
8. **Non-Assignment.** The rights and obligations of the Parties under this Addendum may not be sold, assigned or otherwise transferred.

AGREED TO AND SIGNED BY THE PARTIES.

The University of Texas PERMIAN BASIN

[Contractor]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT J

GDPR DATA PROTECTION ADDENDUM

This GDPR Data Protection Addendum ("**Addendum**") is made and entered into effective as of [] (the "**Effective Date**") by and between **The University of Texas System**, a state agency and institution of higher education established under the laws of the State of Texas ("**University**") and [] ("**Contractor**"), (collectively, "**Parties**"). The purpose of this Addendum is to provide the terms related to privacy, confidentiality, and security which Contractor is required to adhere to, under applicable Data Protection Laws and Regulations, in order to process, handle, and store Personal Information on behalf of University as set forth in the Standard Agreement ("**Underlying Agreement**").

1. Definitions

- (a) "GDPR" means the European Union (EU) General Data Protection Regulation, EU 2016/679 of the European Parliament and of the Council.
- (b) "Personal Information" means any and all data obtained directly from an individual or included in University Records (regardless of format) that (i) identifies or can be used to identify, contact or locate a natural person, or (ii) pertains in any way to an identified natural person. Personal Information includes obvious identifiers (such as names, addresses, email addresses, phone numbers and identification numbers) as well as biometric data, "personal data" (as defined in the GDPR) and any and all information about an individual's computer or mobile device or technology usage, including (for example) IP address, MAC address, unique device identifiers, unique identifiers set in cookies, and any information passively captured about a person's online activities, browsing, application or hotspot usage or device location.
- (c) "Privacy Laws" means all applicable U.S. and international laws that regulate the Processing of Personal Information. In particular, "Privacy Laws" includes the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Family Educational Rights and Privacy Act (FERPA), the Identify Theft Enforcement and Protection Act (ITEPA), the GDPR and other applicable laws that specify privacy, security or security breach notification obligations that affect the Personal Information or the provision of the services by Contractor.
- (d) "Process" or "Processing" means any operation or set of operations which is performed upon Personal Information, whether or not by automatic means, such as collection, compilation, use, disclosure, duplication, organization, storage, alteration, transfer, transmission, combination, redaction, erasure, or destruction.
- (e) "Security Breach" means a "personal data breach" (as defined in the GDPR), a "breach of the security of a system" or similar term (as defined in any other applicable Privacy Law) or any other event that compromises the security, confidentiality or integrity of Personal Information.
- (f) "Sensitive Personal Information" is a subset of Personal Information, which due to its nature has been classified by law or by University policy as deserving additional privacy and security protections. Sensitive Personal Information consists of: (i) all government-issued identification numbers, (ii) all financial account numbers (including payment card information and health insurance numbers), (iii) individual medical records, genetic and biometric information, (iv) all data obtained from a U.S. consumer reporting agency (such as employee background investigation reports, credit reports, and credit scores), (v) user account credentials, such as usernames, passwords, security questions/answers and other password recovery data, (v) data elements that constitute "Special Categories of

Data”, as defined by Article 9 under the GDPR, namely “Personal Information” revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation.

- (g) “Services” means any and all services that University requests the Contractor to perform under the Underlying Agreement.
- (h) “Subprocessor” means any third party (including Contractor’s affiliates, agents, and subcontractors) that provides any services to Contractor and that may have access (including inadvertent access) to any Personal Information.
- (i) “Transfer” means to disclose or otherwise make the Personal Information available to a third party (including to any affiliate or Subprocessor of Contractor), either by physical movement of Personal Data to such third party or by enabling access to Personal Data by other means.

2. Contractor Obligations

- (a) Contractor will only Process or Transfer Personal Information as authorized by University and as necessary to perform the Services detailed in the Underlying Agreement.
- (b) Contractor will promptly inform University in writing:
 - (i) if it is not in compliance with or cannot comply with any material term of this Addendum or of the Underlying Agreement, including any such term regarding the Services. In addition to any other rights of the University under this Addendum, the Underlying Agreement, or applicable law or regulation, in the event of such notice University at its sole discretion may (1) permit Contractor to use reasonable efforts to remedy any such non-compliance or (2) terminate Contractor’s further Processing of Personal Information under this Addendum and the Underlying Agreement;
 - (ii) of any request for access to any Personal Information received from an individual who is (or claims to be) the subject of the data;
 - (iii) of any request for access to any Personal Information received by Contractor from any government agency, entity, or official (including any data protection agency or law enforcement agency);
 - (iv) of any other requests with respect to Personal Information received from University or other third parties, other than those set forth in the Underlying Agreement. Contractor understands that it is not authorized to and will not respond to the requests identified in items (ii), (iii), and (iv) above, unless Contractor is (1) explicitly authorized by University or (2) the response is legally required under a subpoena or similar legal document issued by a government agency, entity, or official that compels disclosure by Contractor.
- (c) If Services involve Contractor’s collection of Personal Information directly from individuals, Contractor will provide the individuals with a clear and conspicuous written privacy notice, which notice will be reviewed by University before Contractor begins providing any Services set forth in the Underlying Agreement. The notice must comply with any legal requirements for the privacy notice in the jurisdictions where it is given, be translated into the languages used in connection with Contractor’s interaction with the individuals, and

indicate that Contractor is processing Personal Information as a processor on behalf of University.

- (d) If the Personal Information includes “protected health information” (or “PHI”) as defined in the Health Insurance Portability and Accountability Act and 45 Code of Federal Regulations (CFR) Part 160 and subparts A and E of Part 164 (collectively, HIPAA”), then before Contractor may receive, maintain or create any Personal Information, Contractor will execute an appropriate Business Associate Agreement (“BAA”) as required by HIPAA with University. To the extent that the BAA conflicts with any term contained in this Addendum or the Underlying Agreement, the terms of the BAA will control.
- (e) Subject to Section 2(b) of this Addendum, Contractor will cooperate with University and with its affiliates and representatives in responding to inquiries, incidents, claims and complaints regarding Processing of Personal Information or as otherwise needed for University to (1) demonstrate compliance with applicable Privacy Laws and (2) respect individuals’ rights under those Privacy Laws.
- (f) Contractor must use reasonable efforts to stay informed of applicable legal and regulatory requirements for Processing of Personal Information. Contractor will ensure that its Processing complies with all applicable Privacy Laws, as well as Contractor’s and University’s privacy notices.

3. Confidentiality and Data Access

- (a) Personal Information is considered Confidential Information of University. Contractor will not use or disclose Personal Information received from or on behalf of University, its students, faculty, or staff, or any third party pursuant to the Underlying Agreement, (including any Personal Information provided by a University student directly to Contractor), except as permitted or required by the Underlying Agreement or this Addendum. If Contractor discloses any Personal Information to a Subprocessor Contractor will require the Subprocessor to comply with the same restrictions and obligations that are imposed on Contractor by the Underlying Agreement and this Addendum, including requiring each Subprocessor to agree to the same restrictions and obligations in writing.
- (b) Contractor will use the administrative, technical and physical security measures, including secure encryption in the case of electronically maintained or transmitted Personal Information, approved by University and that are at least as stringent as the requirements of UT System Information and Resource Use & Security Policy, UTS 165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>, to preserve the confidentiality and security of all Personal Information received from or on behalf of University, its students, faculty, or staff, or any third party pursuant to the Underlying Agreement.
- (c) Contractor has implemented and will maintain documented appropriate business continuity and disaster recovery plans to enable it to continue or resume providing Services in accordance with the Underlying Agreement in the event of any disaster or other adverse event affecting the University and/or Contractor.
- (d) Prior to allowing any employee, subcontractor, representative, agent, subprocessor, or other individual to process Personal Information, Contractor will (i) conduct an appropriate background check of the individual as permitted by law and in compliance with the Underlying Agreement, (ii) require the individual to execute an enforceable confidentiality agreement, and (iii) provide the individual with appropriate privacy and security training. Contractor will also continually monitor its employees, subcontractors, representatives,

agents, subprocessors, or other individuals it provides or engages for compliance with the privacy and security program requirements.

- (e) Contractor, within 24 hours after discovery, will report to University any use or disclosure of Personal Information not authorized by this Addendum or the Underlying Agreement. Contractor's report will identify: (i) the nature of the unauthorized use or disclosure, (ii) the Personal Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure. Contractor will provide such other information, including written reports, as reasonably requested by University.
- (f) Upon request, Contractor will provide University with information about the Contractor's information security program. Contractor will also submit its data processing facilities for audit, during Contractor's reasonable business hours, which will be carried out in a mutually-agreeable manner no more than ten (10) days after such request. In the event that such audit reveals material gaps or weaknesses in Contractor's security program, University will be entitled to terminate Contractor's Processing of Personal Information, including, termination of this Addendum and the Underlying Agreement permanently, or until such issues are resolved.

4. Return of Records

Contractor agrees that no later than 30 days after expiration or termination of the Underlying Agreement or this Addendum for any reason, or within thirty (30) days after University's written request, Contractor will halt all access, use, or processing of Personal Information and will return to University all records, including any copies created by Contractor or any Subprocessor, subcontractor, representative, agent, or other individual or entity that it provides or engages; and Contractor will certify in writing to University that all records have been returned to University.

5. General Provisions

This Agreement is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Texas without regard to choice of law principles.

Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to University:

The applicable U.T. Institution(s)'s Privacy/Data Protection Officer.

With copy to:

The University of Texas System Privacy and Data Protection Officer
Office of Systemwide Compliance
210 West 7th Street
Austin, Texas 78701

If to Contractor: _____

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

AGREED TO AND SIGNED BY THE PARTIES.

The University of

[Contractor]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX THREE

HUB SUBCONTRACTING PLAN

<https://comptroller.texas.gov/purchasing/vendor/hub/forms.php#hsp>

APPENDIX FIVE

ACCESS BY INDIVIDUALS WITH DISABILITIES

Access by Individuals with Disabilities: Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to University all amounts University paid under this Agreement. Contractor will provide all assistance and cooperation necessary for performance and documentation of accessibility testing, planning, and execution criteria conducted by University or University's third party testing resources, as required by [1 TAC §213.38\(g\)](#).

APPENDIX SIX

ELECTRONIC AND INFORMATION RESOURCES ENVIRONMENT SPECIFICATIONS

The specifications, representations, warranties and agreements set forth in Proposer's responses to this **APPENDIX SIX** will be incorporated into the Agreement.

University is primarily a Microsoft products environment.

Basic Specifications

1. If the EIR will be hosted by University, please describe the overall environment requirements for the EIR (size the requirements to support the number of concurrent users, the number of licenses and the input/output generated by the application as requested in the application requirements).
 - A. Hardware: If Proposer will provide hardware, does the hardware have multiple hard drives utilizing a redundant RAID configuration for fault tolerance? Are redundant servers included as well?
 - B. Operating System and Version:
 - C. Web Server: Is a web server required? If so, what web application is required (Apache or IIS)? What version? Are add-ins required?
 - D. Application Server:
 - E. Database:
 - F. Other Requirements: Are any other hardware or software components required?
 - G. Assumptions: List any assumptions made as part of the identification of these environment requirements.
 - H. Storage: What are the space/storage requirements of this implementation?
 - I. Users: What is the maximum number of users this configuration will support?
 - J. Clustering: How does the EIR handle clustering over multiple servers?
 - K. Virtual Server Environment: Can the EIR be run in a virtual server environment?
2. If the EIR will be hosted by Proposer, describe in detail what the hosted solution includes, and address, specifically, the following issues:
 - A. Describe the audit standards of the physical security of the facility; and
 - B. Indicate whether Proposer is willing to allow an audit by University or its representative.
3. If the user and administrative interfaces for the EIR are web-based, do the interfaces support Firefox on Mac as well as Windows and Safari on the Macintosh?
4. If the EIR requires special client software, what are the environment requirements for that client software?
5. Manpower Requirements: Who will operate and maintain the EIR? Will additional University full time employees (FTEs) be required? Will special training on the EIR be required by Proposer's technical staff? What is the estimated cost of required training.
6. Upgrades and Patches: Describe Proposer's strategy regarding EIR upgrades and patches for both the server and, if applicable, the client software. Included Proposer's typical release schedule, recommended processes, estimated outage and plans for next version/major upgrade.

Security

1. Has the EIR been tested for application security vulnerabilities? For example, has the EIR been evaluated against the Open Web Application Security Project (**OWASP**) Top 10 list that includes flaws like cross site scripting and SQL injection? If so, please provide the scan results and specify the tool used. University will not take final delivery of the EIR if University determines there are serious vulnerabilities within the EIR.
2. Which party, Proposer or University, will be responsible for maintaining critical EIR application security updates?
3. If the EIR is hosted, indicate whether Proposer's will permit University to conduct a penetration test on University's instance of the EIR.
4. If confidential data, including HIPAA or FERPA data, is stored in the EIR, will the data be encrypted at rest and in transmittal?

Integration

1. Is the EIR authentication Security Assertion Markup Language (**SAML**) compliant? Has Proposer ever implemented the EIR with Shibboleth authentication? If not, does the EIR integrate with Active Directory? Does the EIR support TLS connections to this directory service?
2. Does the EIR rely on Active Directory for group management and authorization or does the EIR maintain a local authorization/group database?
3. What logging capabilities does the EIR have? If this is a hosted EIR solution, will University have access to implement logging with University's standard logging and monitoring tools, RSA's Envision?
4. Does the EIR have an application programming interface (**API**) that enables us to incorporate it with other applications run by the University? If so, is the API .Net based? Web Services-based? Other?
5. Will University have access to the EIR source code? If so, will the EIR license permit University to make modifications to the source code? Will University's modifications be protected in future upgrades?
6. Will Proposer place the EIR source code in escrow with an escrow agent so that if Proposer is no longer in business or Proposer has discontinued support, the EIR source code will be available to University.

Accessibility Information

Proposer must provide the following, as required by [1 TAC §213.38\(b\)](#):

1. Accessibility information for the electronic and information resources (**EIR**)¹ products or services proposed by Proposer, where applicable, through one of the following methods:
 - (A) URL to completed Voluntary Product Accessibility Templates (**VPATs**)² or equivalent reporting templates;
 - (B) accessible electronic document that addresses the same accessibility criteria in substantially the same format as VPATs or equivalent reporting templates; or
 - (C) URL to a web page which explains how to request completed VPATs, or equivalent reporting templates, for any product under contract; and
2. Credible evidence of Proposer's capability or ability to produce accessible EIR products and services. Such evidence may include, but is not limited to, Proposer's internal accessibility policy documents, contractual warranties for accessibility, accessibility testing documents, and examples of prior work results.

¹ Electronic and information resources are defined in [§2054.451, Government Code](#) and [1 TAC §213.1 \(6\)](#).

² Voluntary Product Accessibility Templates are defined in [1 TAC §213.1 \(19\)](#). For further information, see this [VPAT document](#) provided by the Information Technology Industry Council.

APPENDIX SEVEN

SECURITY CHARACTERISTICS AND FUNCTIONALITY OF CONTRACTOR'S INFORMATION RESOURCES

The specifications, representations, warranties and agreements set forth in Proposer's responses to this **APPENDIX SEVEN** will be incorporated into the Agreement.

"Information Resources" means any and all computer printouts, online display devices, mass storage media, and all computer-related activities involving any device capable of receiving email, browsing Web sites, or otherwise capable of receiving, storing, managing, or transmitting Data including, but not limited to, mainframes, servers, Network Infrastructure, personal computers, notebook computers, hand-held computers, personal digital assistant (PDA), pagers, distributed processing systems, network attached and computer controlled medical and laboratory equipment (i.e. embedded technology), telecommunication resources, network environments, telephones, fax machines, printers and service bureaus. Additionally, it is the procedures, equipment, facilities, software, and Data that are designed, built, operated, and maintained to create, collect, record, process, store, retrieve, display, and transmit information.

"University Records" means records or record systems that Proposer (1) creates, (2) receives from or on behalf of University, or (3) has access, and which may contain confidential information (including credit card information, social security numbers, and private health information (**PHI**) subject to Health Insurance Portability and Accountability Act (**HIPAA**) of 1996 (Public Law 104-191), or education records subject to the Family Educational Rights and Privacy Act (**FERPA**).

General Protection of University Records

1. Describe the security features incorporated into Information Resources (ref. **Section 5.3.4**) to be provided or used by Proposer pursuant to this RFP.
2. List all products, including imbedded products that are a part of Information Resources and the corresponding owner of each product.
3. Describe any assumptions made by Proposer in its proposal regarding information security outside those already listed in the proposal.

Complete the following additional questions if the Information Resources will be hosted by Proposer:

4. Describe the monitoring procedures and tools used for monitoring the integrity and availability of all products interacting with Information Resources, including procedures and tools used to, detect security incidents and to ensure timely remediation.
5. Describe the physical access controls used to limit access to Proposer's data center and network components.
6. What procedures and best practices does Proposer follow to harden all systems that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed?
7. What technical security measures does the Proposer take to detect and prevent unintentional, accidental and intentional corruption or loss of University Records?
8. Will the Proposer agree to a vulnerability scan by University of the web portal application that would interact with Information Resources, including any systems that would hold or process University Records, or from which University Records may be accessed? If Proposer objects, explain basis for the objection to a vulnerability scan.
9. Describe processes Proposer will use to provide University assurance that the web portal and all systems that would hold or process University Records can provide adequate security of University Records.
10. Does Proposer have a data backup and recovery plan supported by policies and procedures, in place for Information Resources? If yes, briefly describe the plan, including scope and frequency of backups, and how often the plan is updated. If no, describe what alternative methodology Proposer uses to ensure the restoration and availability of University Records.
11. Does Proposer encrypt backups of University Records? If yes, describe the methods used by Proposer to encrypt backup data. If no, what alternative safeguards does Proposer use to protect backups against unauthorized access?
12. Describe the security features incorporated into Information Resources to safeguard University Records containing confidential information.

Complete the following additional question if Information Resources will create, receive, or access University Records containing PHI subject to HIPAA:

13. Does Proposer monitor the safeguards required by the HIPAA Security Rule (45 C.F.R. §164 subpts. A, E (2002)) and Proposer's own information security practices, to ensure continued compliance? If yes, provide a copy of or link to the Proposer's HIPAA Privacy & Security policies and describe the Proposer's monitoring activities and the frequency of those activities with regard to PHI.

Access Control

1. How will users gain access (i.e., log in) to Information Resources?
2. Do Information Resources provide the capability to use local credentials (i.e., federated authentication) for user authentication and login? If yes, describe how Information Resources provide that capability.
3. Do Information Resources allow for multiple security levels of access based on affiliation (e.g., staff, faculty, and student) and roles (e.g., system administrators, analysts, and information consumers), and organizational unit (e.g., college, school, or department)? If yes, describe how Information Resources provide for multiple security levels of access.
4. Do Information Resources provide the capability to limit user activity based on user affiliation, role, and/or organizational unit (i.e., who can create records, delete records, create and save reports, run reports only, etc.)? If yes, describe how Information Resources provide that capability. If no, describe what alternative functionality is provided to ensure that users have need-to-know based access to Information Resources.
5. Do Information Resources manage administrator access permissions at the virtual system level? If yes, describe how this is done.
6. Describe Proposer's password policy including password strength, password generation procedures, password storage specifications, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

Complete the following additional questions if Information Resources will be hosted by Proposer:

7. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that would have access to the environment hosting University Records to ensure need-to-know-based access?
8. What procedures and best practices does Proposer have in place to ensure that user credentials are updated and terminated as required by changes in role and employment status?
9. Describe Proposer's password policy including password strength, password generation procedures, and frequency of password changes. If passwords are not used for authentication or if multi-factor authentication is used to Information Resources, describe what alternative or additional controls are used to manage user access.

Use of Data

Complete the following additional questions if Information Resources will be hosted by Proposer:

1. What administrative safeguards and best practices does Proposer have in place to vet Proposer's and third-parties' staff members that have access to the environment hosting all systems that would hold or process University Records, or from which University Records may be accessed, to ensure that University Records will not be accessed or used in an unauthorized manner?
2. What safeguards does Proposer have in place to segregate University Records from system data and other customer data and/or as applicable, to separate specific University data, such as HIPAA and FERPA protected data, from University Records that are not subject to such protection, to prevent accidental and unauthorized access to University Records ?
3. What safeguards does Proposer have in place to prevent the unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access, or disclosure of University Records?
4. What procedures and safeguards does Proposer have in place for sanitizing and disposing of University Records according to prescribed retention schedules or following the conclusion of a project or termination of a contract to render University Records unrecoverable and prevent accidental and unauthorized access to University Records? Describe the degree to which sanitizing and disposal processes addresses University data that may be contained within backup systems. If University data contained in backup systems is not fully sanitized, describe processes in place that would prevent subsequent restoration of backed-up University data.

Data Transmission

1. Do Information Resources encrypt all University Records in transit and at rest? If yes, describe how Information Resources provide that security. If no, what alternative methods are used to safeguard University Records in transit and at rest?

Complete the following additional questions if Information Resources will be hosted by Proposer:

2. How does data flow between University and Information Resources? If connecting via a private circuit, describe what security features are incorporated into the private circuit. If connecting via a public network (e.g., the Internet), describe the way Proposer will safeguard University Records.

3. Do Information Resources secure data transmission between University and Proposer? If yes, describe how Proposer provides that security. If no, what alternative safeguards are used to protect University Records in transit?

Notification of Security Incidents

Complete the following additional questions if Information Resources will be hosted by Proposer:

1. Describe Proposer's procedures to isolate or disable all systems that interact with Information Resources in the event a security breach is identified, including any systems that would hold or process University Records, or from which University Records may be accessed.

2. What procedures, methodology, and timetables does Proposer have in place to detect information security breaches and notify University and other customers? Include Proposer's definition of security breach.

3. Describe the procedures and methodology Proposer has in place to detect information security breaches, including unauthorized access by Proposer's and subcontractor's own employees and agents and provide required notifications in a manner that meets the requirements of the state breach notification law.

Compliance with Applicable Legal & Regulatory Requirements

Complete the following additional questions if Information Resources will be hosted by Proposer:

1. Describe the procedures and methodology Proposer has in place to retain, preserve, backup, delete, and search data in a manner that meets the requirements of state and federal electronic discovery rules, including how and in what format University Records are kept and what tools are available to University to access University Records.

2. Describe the safeguards Proposer has in place to ensure that systems (including any systems that would hold or process University Records, or from which University Records may be accessed) that interact with Information Resources reside within the United States of America. If no such controls, describe Proposer's processes for ensuring that data is protected in compliance with all applicable US federal and state requirements, including export control.

3. List and describe any regulatory or legal actions taken against Proposer for security or privacy violations or security breaches or incidents, including the final outcome.

APPENDIX EIGHT

CERTIFICATE OF INTERESTED PARTIES (Texas Ethics Commission Form 1295)

This is a sample Texas Ethics Commission's FORM 1295 – CERTIFICATE OF INTERESTED PARTIES. If not exempt under [Section 2252.908\(c\), Government Code](#), Contractor must use the Texas Ethics Commission electronic filing web page (at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php) to complete the most current Certificate of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and University. **The Certificate of Interested Parties will be submitted only by Contractor to University with the signed Agreement.**

CERTIFICATE OF INTERESTED PARTIES**FORM 1295**

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is no interested party. ☐

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20_____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY