

[Note: THIS TEMPLATE IS NOT AN OGC STANDARD FORM CONTRACT. THIS TEMPLATE IS INTENDED AS GENERAL INFORMATION AND AS AN EXAMPLE ONLY. IT IS NOT INTENDED TO PROVIDE SPECIFIC LEGAL ADVICE FOR A PARTICULAR SITUATION. PLEASE DO NOT RELY ON THIS TEMPLATE AS A SUBSTITUTE FOR OBTAINING LEGAL ADVICE FROM A LICENSED ATTORNEY.]

[CONTRACT MUST BE APPROVED BY OFFICE OF LEGAL AFFAIRS.]

AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Agreement between University and Contractor (**Agreement**) is made and entered into effective as of this **enter day** of **enter month**, **enter year** (**Effective Date**), by and between **The University of Texas at Tyler**, an agency and institution of higher education established under the laws of the State of Texas (**University**), and **Legal Name of Contractor**, a **[Note: Insert type of organization (corporation, partnership, etc.) and State in which Contractor is organized.] (Contractor)** **[Option: , Federal Tax Identification Number _____]** **[Note: If Contractor is an individual, delete the following text: “, Federal Tax Identification Number _____”. DO NOT INCLUDE AN INDIVIDUAL’S SOCIAL SECURITY NUMBER IN THIS AGREEMENT. Please review UT System Policy [UTS165](#) related to protecting the confidentiality of Social Security Numbers.]**

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 **[Option (Include if Contractor has performed Work for University before this Agreement is signed.):** Upon execution of this Agreement, all goods or services previously provided 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 **provide description** 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 the **enter day** of **enter month**, **enter year**. University will have the option to renew this Agreement for **in words enter number (#)** additional **in words enter number (#)** 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 rules, regulations, and policies of The University of Texas System (<https://www.utsystem.edu/sites/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 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 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. **Option (Include if Contractor is paid on hourly fee basis.):** Contractor will furnish efficient business administration and coordination and perform Work in an expeditious and economical manner consistent with the interests of University.]
- 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 **Option:** 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.】

[Option (Premises Rules.): 4.11 If this Agreement requires Contractor's presence on University's premises or in University's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.】

[Option (Include only if Contractor performs Work at University and provides Work to University, and Contractor is not paid for with appropriated money. See §2252.061(1), Texas Government Code, for definition of "auxiliary enterprise." Contact OGC with questions.): 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 **[Note: Insert date that is 12 months after Effective Date (i.e., if**

Effective Date is January 1, 2007, then insert December 31, 2007).] 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 (\$ _____). **[Note: Amount of performance bond may not exceed the contract price.] [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 So long as Contractor has provided University with its current and accurate Federal Tax Identification Number in writing, 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 above) 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 **enter % (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.

7.7 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) period] [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, THE UNIVERSITY OF TEXAS SYSTEM, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, **INDEMNITEES**) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, **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.** [Note: These are minimum insurance requirements developed by the UT System Office of Risk Management. Depending on the type of goods or services covered by this Agreement, consideration should be given to increasing the types of insurance coverages and the limits. In particular, services related to health and safety concerns, hazardous chemicals, or the disposal of hazardous wastes require increased types of insurance coverages and increased limits; therefore, please refer your contract to your institution's designated risk management contact for assistance. For contracts with professionals, consider requiring professional liability insurance of not less than \$1,000,000 per claim. Contact your institution's designated risk management contact for assistance with review of all Certificates of 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.

[Option: In the event watercraft is used in the course of performing Work, the maritime coverage endorsement must be added unless separate Protection & Indemnity coverage is maintained. In the event operations are conducted in relation to navigable waters which may qualify employees for United States Longshore & Harbor Workers Compensation Act (**USL&H**) benefits, the USL&H endorsement must be added.]

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

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

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

[Option: 11.1.4 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000. The Umbrella/Excess Liability policy will be excess over and at least as broad as the underlying coverage as required under sections 11.1.1 Employer's Liability; 11.1.2 Commercial General Liability; **[Option:** and] 11.1.3 Business Auto Liability **[Option:** ; and 11.1.5 Liquor Liability]. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.] **[Note: Limit amount should be adequate to cover University's exposure. Appropriate limit will depend on the subject matter of this Agreement.]**

[Option: 11.1.5 Liquor Liability Insurance, with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate for bodily injury and property damage arising from selling, serving or furnishing of any alcoholic beverage by Contractor or Contractor's employees, representatives, agents, or subcontractors in the performance of this Agreement.]

[Option: 11.1.6 Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$3,000,000 aggregate. Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.]

[Option: 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 **[Option:** \$500,000] **[Alternate Option:** \$1,000,000] 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. **[Note: Limit amount should be adequate to cover University's exposure. Appropriate limit will depend on the subject matter of this Agreement.]**

[Option: 11.1.8 Directors' and Officers' Liability Insurance with limits of not less than \$1,000,000 per claim. The coverage will be continuous for the duration of this Agreement and for not less than twenty-four (24) months following the expiration or termination of this Agreement.]

[Note: If this Agreement involves construction on property owned by the Board of Regents of The University of Texas System, please contact the UT System Office of Risk Management for guidance and relevant insurance requirements.]

[Note: If this Agreement poses potential risks related to data privacy, network or information security, please contact the UT System Office of Risk Management for guidance on relevant insurance requirements and seek review of the contract by the Institution's Information Security Officer.]

[Option:] 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 **[Option: _____]** **[Alternate Option: 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 **[Option (Delete only if contracting party is UT System.)]**, 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 **[Option (Delete only if contracting party is UT System.)]**, 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 **[Option (Delete only if contracting party is UT System.)]**, 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: Click or tap here to enter text.

Address: Click or tap here to enter text.

Facsimile Number: Click or tap here to enter text.

Email Address: Click or tap here to enter text.

- 11.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or **[Option (Delete only if contracting party is UT System.):** 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. **[Option:** , except as provided in this **Section 11.3.]**

[Option: 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.]

[Option: 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.** **[Option (Include if the value of this Agreement is expected to equal or exceed \$100,000 or if University has requested a HUB Subcontracting Plan.):** 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 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.** Smith 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.

[Note: BEFORE A UT INSTITUTION EXECUTES THIS AGREEMENT, it is the UT Institution's sole responsibility to (1) identify what categories and or sources of FERPA data, if any, Contractor will access, create or maintain on behalf of University pursuant to this Agreement, (2) ensure that the FERPA Confidentiality and Security Addendum made a part of this Agreement is accurate as of the Effective Date as well as the date this Agreement is signed by the UT Institution; (3) confirm the FERPA Confidentiality and Security Addendum is suitable given the terms of the contract to which it is attached; and (4) ensure that any modifications to the model FERPA Confidentiality and Security Addendum have been reviewed and approved for FERPA compliance by the UT Institution, as applicable.

- 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. **[Option (Include if University Records are subject to FERPA.):** 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.** **[Option (Include if Section 12.40 related to Payment Card Industry Data Security Standards is not included 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 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.

[Alternate Option (Use if University has confirmed that University will not provide Contractor any University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the Texas Public Information Act.): 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**). 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 Section 12.40 related to Payment Card Industry Data Security Standards is not included in this Agreement.):** as well as the Payment Card Industry Data Security Standards¹) 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 seven (7) years after the expiration or termination of this Agreement or until all audit, claim, and litigation matters are resolved, whichever is later, 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: Click or tap here to enter text.

Email: Click or tap here to enter text.

Attention: Click or tap here to enter text.

with copy to: The University of Texas at Tyler
3900 University Blvd.
Tyler, TX 75799
Attention: University Counsel

If to Contractor: _____

Fax: Click or tap here to enter text.

Email: Click or tap here to enter text.

Attention: Click or tap here to enter text.

or other person or address as may be given in writing by either party to the other 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 Auditor any information Auditor considers relevant to the investigation or audit. Contractor will include this provision in all contracts with permitted subcontractors. This provision is included pursuant to [Section 2262.154 of the Texas Government Code](#).
- 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.

[Option (Include when Work is capable of being re-characterized as "construction" even if University does not believe Work is a "public work.")]: Contractor will receive no financial compensation for delay or hindrance to Work. In no event will University be liable to Contractor or its employees, agents, representatives or subcontractors, for any damages arising out of or associated with any delay or hindrance to Work, regardless of the source of the delay or hindrance, including a force majeure occurrence, and even if such delay or hindrance results from, arises out of, or is due, in whole or in part, to the negligence, breach of contract or other fault of University. Contractor's sole remedy in any such case will be an extension of time.

In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, neither party will be entitled to recover attorneys' fees, costs or other related expenses from the other party.]

- 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.
- 12.20 **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 <http://catalogs.uttyler.edu/en/UTTyler/HOP/Series-200-General-Policies-and-Procedures/2-5-2-Conflicts-of-Interest-Conflicts-of-Commitment-and-Outside-Activities>, University's Standards of Conduct Guide at <https://www.uttyler.edu/compliance/documents/SOCGuide.pdf>, and applicable state ethics laws and rules at <https://www.utsystem.edu/offices/systemwide-compliance/ethics>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- 12.23 **[Note: Include the following provision if "computer equipment" is being purchased or leased under this Agreement. The term "computer equipment" includes desktop or notebook computers as well as a computer monitor or other display device that does not contain a tuner.] State of Texas Computer Equipment Recycling Program Certification.** Pursuant to [§361.965, Texas Health and Safety Code](#), Contractor certifies that it is full compliance with the *State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, Subchapter Y, Chapter 361, Texas Health and Safety Code*, and the rules adopted by the Texas Commission on Environmental Quality under that Act at [30 TAC §§328.131 through 328.155](#). Contractor acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 12.24 **[Option (Include if University cannot be reasonably or adequately compensated in damages for the loss of Contractor's services.): 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 (include if (1) the value of this Agreement is expected to equal or exceed \$100,000 or if University has requested a HUB Subcontracting Plan, and (2) University elects a less detailed HSP contract provision): Historically Underutilized Business**

Subcontracting Plan. 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** _____ **[Note: Insert Exhibit number/letter.]**). 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](#).]

[Alternate Option (include if (1) the value of this Agreement is expected to equal or exceed \$100,000 or if University has requested a HUB Subcontracting Plan, and (2) University elects a more detailed HSP contract provision): Historically Underutilized Business Subcontracting Plan. 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.

12.27.1 **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.

12.27.2 **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](#).]

- 12.28 **Responsibility for Individuals Performing Work; Criminal Background Checks.** 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, and (2) have an appropriate criminal background screening performed on all the individuals. 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 campus 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.

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 assigned to perform Work.

- 12.29 **[Option: (Include when Joint Commission standards apply to Work being provided.): Quality Assurance.** Contractor will (a) comply with all applicable standards of the Joint Commission (**Joint Commission**); (b) implement and monitor a quality assurance process that complies with Joint Commission standards; (c) comply with applicable Joint Commission privileging standards for licensed independent practitioners; (d) upon request, provide assurance to University of a licensed independent practitioner's privileging file; and (e) provide University with periodic reports of its quality assurance indicators and/or permit University to conduct periodic quality assurance audits of Work.]

[Options (If University is an institution that receives funds from Medicare/Medicaid or if cost of Work is included in amounts charged back to federal sponsored projects, federal contracts or federal grants, consult with University's Office of Sponsored Projects to determine whether inclusions of Sections 12.30 through 12.37 or other contract provisions are required.):

- 12.30 **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](#).

- 12.31 **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 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.
- 12.32 **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/>
- 12.33 **Access to Documents.** To the extent applicable to this Agreement, in accordance with §1861(v)(l)(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.
- 12.34 **Affirmative Action.** Exhibit _____, Affirmative Action Compliance Program, contains a written copy of Contractor's Civil Rights "*Affirmative Action Compliance Program*," or if Contractor is not required to have such a written program, the reason Contractor is not subject to such requirement.

12.35 **OSHA Compliance.** To the extent applicable to the Work performed under this Agreement, Contractor represents and warrants, that all Work, 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.

12.36 **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.

12.37 **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.]

[Option: (Include if this Agreement relates to electronic and information resources, including hardware, software or related services.): 12.38 **EIR Environment Specifications.** Exhibit _____, 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 _____, Environment Specifications, are binding on Contractor. Contractor agrees to perform Work in compliance with Exhibit _____, Environment Specifications.]

[Option: (Include if this Agreement relates to electronic and information resources, including hardware, software or related services.): 12.39 **Security Characteristics and Functionality of Contractor's Information Resources.** Exhibit _____, 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 _____, Security Characteristics and Functionality of Contractor's Information Resources, are binding on Contractor. Contractor agrees to perform Work in compliance with Exhibit _____, Security Characteristics and Functionality of Contractor's Information Resources.]

[Option: (Use in all contracts under which Contractor will process credit card payments to perform or further any portion of the services provided by Contractor, including (1) contracts for retail outlet services (merchandise sales, ticket sales, etc.) under which Contractor will accept credit card payments, and (2) contracts for development and fund raising activities under which Contractor will accept gifts to University via credit card): 12.40 Payment Card Industry Standards. [Note: If using this Option, confirm that the services provided by Contractor do not violate or conflict with existing UT System or State of Texas contracts or agreements.] University is required to validate compliance on a periodic basis with applicable Payment Card Industry Data Security Standards (PCI DSS), including Payment Application Data Security Standards (PA DSS), promulgated by the Payment Card Industry Security Standards Council (PCI SSC). The compliance validation process requires University to undergo an assessment of (1) system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) related processes used to process, store or transmit cardholder data, (System Components in Scope). Some or all System Components in Scope have been outsourced to Contractor under this Agreement. Contractor will cause its agents and subcontractors to comply with all terms of this Section applicable to Contractor. Contractor will achieve and maintain compliance under the current versions of PCI DSS and PA DSS published on the PCI SSC website for service providers and payment applications. Contractor will provide to University (1) on or before the date this Agreement is signed by University, and (2) within ten (10) days after each anniversary of the date this Agreement is signed by University, a copy of Contractor's annual attestation of compliance signed by a Qualified Security Assessor (QSA) as described on the PCI SSC website.

If Contractor is unable to provide the required attestations of compliance, Contractor will permit University or University's QSA to assess all System Components in Scope that are hosted or managed by Contractor or by Contractor's agents or subcontractors. Contractor will create and maintain reasonably detailed, complete and accurate documentation describing the systems, processes, network segments, security controls, and dataflow used to receive, transmit, store and secure cardholder data. The documentation will conform to the most current version of PCI DSS. Contractor will, upon written request by University, make the documentation and the individuals responsible for implementing, maintaining and monitoring System Components in Scope available to (1) QSAs, forensic investigators, consultants and attorneys retained by University to facilitate the validation of University's PCI DSS compliance, and (2) University's information technology, information security, audit, compliance and other staff.

Contractor will retain the documentation for at least one (1) year after termination of this Agreement.]

[Option (Include if Contractor provides an Internet application, software or a database under this Agreement.): 12.41 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.]

[Note: A model FERPA Confidentiality and Security Addendum that meets the minimum contracting requirements of FERPA is attached as an exhibit to this Agreement template.]

BEFORE A UT INSTITUTION EXECUTES THIS AGREEMENT, it is the UT Institution's sole responsibility to (1) identify what categories and or sources of FERPA Data, if any, Contractor will access, create or maintain on behalf of University pursuant to this Agreement, (2) ensure that the template is accurate as of the Effective Date as well as the date this Agreement is signed by the UT Institution; (3) confirm the FERPA Confidentiality And Security Addendum is suitable given the terms of the contract to which it is attached; and (4) ensure that any modifications to the model FERPA Confidentiality And Security Addendum have been reviewed and approved for compliance with FERPA by the UT Institution's representative that is responsible for FERPA compliance.]

[Option (Use in all contracts under which Contractor will access University Records subject to FERPA.):12.42 **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 _____ [Note: Insert Exhibit number/letter.]**, FERPA Confidentiality and Security Addendum. **EXHIBIT _____ [Note: Insert Exhibit number/letter.]**, 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 _____ [Note: Insert Exhibit number/letter.]**, FERPA Confidentiality and Security Addendum, Contractor will comply with **Section 12.11** in connection with all FERPA Data. To the extent that **EXHIBIT _____ [Note: Insert Exhibit number/letter.]**, FERPA Confidentiality and Security Addendum, conflicts with any term contained in this Agreement, the terms of **EXHIBIT _____ [Note: Insert Exhibit number/letter.]**, 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. **[Note: This provision should only be included in a contract that (1) has a value of \$100,000 or more that is to be paid wholly or partly from public funds and (2) is with a for-profit entity, not including a sole proprietorship, that has 10 or more full time employees. [Section 2271.002, Texas Government Code](#), requires inclusion of this section in contracts between a governmental entity and a "company". [Section 2271.001\(2\), Texas Government Code](#), defines "company" to have the meaning assigned by [Section 808.001, Texas Government Code](#), not including a sole proprietorship. [Section 808.001\(2\)](#) defines "company" as a for-profit entity.]**

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.]

[Option: (Include if this Agreement may be translated into languages other than English.): 12.45

Translations. 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.]

Note: BEFORE A UT INSTITUTION EXECUTES THIS AGREEMENT, it is the UT Institution's sole responsibility to determine if the engagement with the Contractor will trigger compliance measures with the General Data Protection Regulation (GDPR) because (1) data may be collected or solicited from individuals located within a EU country (i.e., alumni relations/donations, student recruitment, foreign sponsored research, study abroad related); or (2) the Contractor may directly or indirectly monitor the activity through data of individuals located within a EU country. If your institution requires further assistance with this determination, please contact UT System Privacy Officer.

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 [Note: Insert Exhibit number/letter.]**, GDPR Data Protection Addendum. Except as otherwise provided by the GDPR Data Protection Addendum included as **EXHIBIT ____** 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 number/letter** conflicts with **EXHIBIT [Note: Insert Exhibit number/letter.]**, GDPR Data Protection Addendum, Contractor will comply with **Section number/letter** in connection with all Data subject to GDPR.

[Option: Include in contracts under which the Contractor (including its subcontractors, officers, or employees) has access to a state computer system or database. For more information, see the Texas Department of Information Resources' website on this requirement: <https://dir.texas.gov/View-About-DIR/Information-Security/Pages/Content.aspx?id=154>

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.】

- 12.49 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. **[Note: This provision should only be included in a contract entered into on or after 9/1/21 that (1) has a value of \$100,000 or more that is to be paid wholly or partly from public funds and (2) 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 the University determines that these requirements are inconsistent with the University's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.]**
- 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.

[Option: Include the following if under this Agreement the Contractor will be granted direct or remote access to or control of critical infrastructure in the State of Texas, excluding access specifically allowed by the University for product warranty and support purposes. For purposes of the following, "critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility. As used in the preceding, "cybersecurity" means the measures taken to protect a computer, computer network, computer system, or other technology infrastructure against unauthorized use or access.]

12.52 Contractor Certification Relating to Critical

Infrastructure. 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. **]**

[Option: Include if the Contractor or its subcontractors or third-party providers will be providing cloud computing services (CCSs) to the University or processing (including storing or transmitting) University data using CSSs. 12.53 Contractor Compliance and Warranty Relating to Cloud Computing Services. The Texas Department of Information Resources (DIR) has established and implemented a state risk and authorization management program providing a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services (CCSs) that process (including storing or transmitting) the data of Texas state agencies (TX-RAMP). The requirements of TX-RAMP include [Section 2054.0593 of the Texas Government Code, Title 1, Rule 202.77 of the Texas Administrative Code](#), and DIR’s TX-RAMP Manual.

Contractor represents and warrants that throughout the term of this Agreement it will comply with the requirements of TX-RAMP and that all CCSs subject to TX-RAMP will comply with the requirements of and be certified under TX-RAMP. The CCSs subject to TX-RAMP include those provided by Contractor either through this Agreement or in furtherance of this Agreement, including CCSs provided through Contractor’s subcontractors or third-party providers. A CCS used in furtherance of this Agreement includes a CCS that Contractor or its subcontractors or third-party providers use to process (including storing or transmitting) University data, even if the University itself does not access or use that CCS. Contractor’s subcontractors or third-party providers responsible solely for servicing or supporting a CCS provided by Contractor or another Contractor subcontractor or third-party provider shall not be required to provide evidence of TX-RAMP certification; instead, Contractor will be responsible for providing such evidence. The list of current TX-RAMP certified CCSs and DIR’s TX-RAMP Manual are set forth at <https://dir.texas.gov/txramp>. **[Option: Include if greater specificity is desired:** Contractor further represents and warrants that the only CCSs that it will provide either through this Agreement or in furtherance of this Agreement as provided above are the following:

_____ **]**

Contractor understands and agrees that the University may not enter into or renew a contract with Contractor to purchase CCSs that are subject to TX-RAMP unless Contractor demonstrates compliance with TX-RAMP requirements. Contractor acknowledges this Agreement may be terminated and payment withheld if Contractor does not comply with TX-RAMP or this Section. **]**

[Note: Delete all bracketed ([]) and highlighted text before sending this Agreement to Contractor.]

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

UNIVERSITY:

CONTRACTOR:

THE UNIVERSITY OF TEXAS AT TYLER

Enter Contractor's Legal Name

By: _____
Name: Amir Mirmiran, Ph.D.
Title: Provost and EVP for Academic Affairs

By: _____
Name: _____
Title: _____

[Option (Include if Contractor is a corporation.):

Attest: _____
Corporate Secretary]

Attach:

EXHIBIT A – Scope of Work

EXHIBIT B – Schedule

EXHIBIT C – Payment for Work

[Option (Include if HUB Subcontracting Plan was prepared in connection with Work covered by this Agreement.): EXHIBIT D – HUB Subcontracting Plan]

[Option (Include if federal contract provisions are included in this Agreement.): EXHIBIT ____ – Affirmative Action Compliance Program]

[Option: (Include if this Agreement relates to electronic and information resources, including hardware, software or related services.): EXHIBIT ____ – Environment Specifications]

[Option: (Include if this Agreement relates to electronic and information resources, including hardware, software or related services.): EXHIBIT ____ – Security Characteristics and Functionality of Contractor's Information Resources]

[Option: (Include if Contractor will receive, create and/or maintain for or on behalf of University FERPA Data.): EXHIBIT ____ – FERPA Confidentiality and Security Addendum]

[Option: (Include if Contractor will trigger GDPR provisions with the services provided to University or on behalf of University: EXHIBIT ____ – 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 WORK

WORK FEES: [Note: Identify below all fees that your UT institution will pay to the Contractor for the Work. If the fee is not a stipulated lump sum, include a “not to exceed” fee cap amount.]

Notwithstanding the foregoing, the total cumulative amount paid 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 work or 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 work or services at the Work Fees 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://fmx.cpa.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**.

[Option (Include if a HUB Subcontracting Plan is required or is available.): EXHIBIT D

HUB SUBCONTRACTING PLAN]

Option (Include if federal contract provisions are included in this Agreement.): EXHIBIT ____

AFFIRMATIVE ACTION COMPLIANCE PROGRAM]

[Option (Include if this Agreement relates to electronic and information resources, including hardware, software or related services.): EXHIBIT _____]

ENVIRONMENT SPECIFICATIONS]

[Option (Include if this Agreement relates to electronic and information resources, including hardware, software or related services.): EXHIBIT _____]

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

Option (Include if Contractor will receive, create and/or maintain for or on behalf of University FERPA Data.): EXHIBIT _____

FERPA CONFIDENTIALITY AND SECURITY ADDENDUM

[NOTE: This is a model FERPA Confidentiality and Security Addendum that meets the minimum contracting requirements of FERPA.]

BEFORE A UT INSTITUTION EXECUTES THE AGREEMENT BETWEEN UNIVERSITY AND CONTRACT, it is the UT Institution's sole responsibility to (1) identify what categories and or sources of FERPA Data, if any, Contractor will access, create or maintain on behalf of University pursuant to the Agreement, (2) ensure that the model FERPA Confidentiality And Security Addendum is accurate as of the Effective Date as well as the date the Agreement between University and Contractor is signed by the UT Institution; (3) confirm the FERPA Confidentiality And Security Addendum is suitable given the terms of the contract to which it is attached; and (4) ensure that any modifications to the model FERPA Confidentiality And Security Addendum have been reviewed and approved for compliance with FERPA by the UT Institution's representative that is responsible for FERPA compliance. In addition, FERPA requires that Education Records created or maintained by a third party should be returned or securely destroyed upon expiration or termination of the contract. In some cases, it may be more practical to place the burden on the Contractor to destroy all copies rather than to return the copies. The UT INSTITUTION must determine which option would serve the best interest of the Institution. For example, if storage of records was outsourced, records would need to be returned. In other situations, destruction may be the most feasible way to ensure that the Contractor and any subcontractors retain no FERPA records following expiration or termination of the contract.]

FERPA CONFIDENTIALITY AND SECURITY ADDENDUM

This FERPA Confidentiality and Security Addendum (**Addendum**) is made and entered into effective as of **[REDACTED]** (**Effective Date**) by and between **The University of Texas at Tyler**, a state agency and institution of higher education established under the laws of the State of Texas (**University**) and **[REDACTED]** (**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 **this Agreement Between University and Contractor.(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 Smith 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 at Tyler

[Contractor]

By: _____

By: _____

Name: Amir Mirmiran, Ph.D.

Name: _____

Title: Provost and EVP for Academic Affairs

Title: _____

Date: _____

Date: _____

EXHIBIT _____

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 Agreement Between University and Contractor (“**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 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 University of Texas at Tyler
Director of Information Security
3900 University Blvd.
Tyler, TX 75799

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 Texas at Tyler

[Contractor]

By: _____

By: _____

Name: Amir Mirmiran, Ph.D.

Name: _____

Title: Provost and EVP for Academic Affairs

Title: _____

Date: _____

Date: _____