

**TEXAS A&M UNIVERSITY-TEXARKANA  
ADDENDUM TO AGREEMENT**

The following terms and conditions are incorporated into and form a part of the agreement (the "Agreement") to which this Addendum is attached. Texas A&M University-Texarkana ("TAMUT"), a member of The Texas A&M University System, an agency of the state of Texas and \_\_\_\_\_ ("Contractor").

**I. REPRESENTATIONS AND WARRANTIES BY CONTRACTOR:**

If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that it is duly organized, validity existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

**II. FRANCHISE TAX CERTIFICATION:**

If Contractor is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax code*), then Contractor certifies that it is not currently delinquent in the payment of any franchise taxes or that Contractor is exempt from the payment of franchise taxes.

**III. ELIGIBILITY CERTIFICATION:**

A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

**IV. DEBTS OR DELINQUENCIES:**

Pursuant to Section 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward certain debts or delinquencies that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

**V. CHILD SUPPORT:**

A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an Agreement to provide property, materials, or services until all arrearages have been paid or the

obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: “Under Section 231.006, *Texas Family Code*, the bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is innaccurate.”

**VI. BUY TEXAS:**

With respect to all goods purchased pursuant to this Agreement, Contractor represents and warrants that goods produced in Texas will be given preference if the cost and quality are equal to the goods produced outside of Texas.

**VII. PUBLIC INFORMATION ACT:**

(a) Contractor acknowledges that TAMUT is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

(b) Upon TAMUT’s written request, Contractor will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, *Texas Government Code*, to TAMUT in a non-proprietary format acceptable to TAMUT. As used in this provision, “public information” has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which TAMUT has a right of access.

(c) Contractor acknowledges that TAMUT may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

**VIII. NOTICES:**

Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TAMUT and Contractor can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

**TAMUT:** Texas A&M University-Texarkana  
7101 University Avenue  
Texarkana, TX 75503  
Attention: Contracts Office  
Telephone: ( ) \_\_\_\_\_

Facsimile: ( ) \_\_\_\_\_  
E-mail: [contracts@tamut.edu](mailto:contracts@tamut.edu)

**Contractor:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_  
E-mail: \_\_\_\_\_

**IX. GOVERNING LAW:**

The validity of this Agreement and all matters pertaining thereto, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.

**X. VENUE:**

This Agreement is performable in Bowie County, Texas. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMUT shall be in the county in which the primary office of the chief executive officer of TAMUT is located. At the time of execution of this Agreement, such county is Bowie County, Texas.

**XI. EQUAL EMPLOYMENT:**

Texas A&M University-Texarkana is an Equal Opportunity/Affirmative Action employer and does not discriminate in employment opportunities or practices on the basis of race, sex, color, national origin, religion, age, disability, genetic information or veteran status. Contractor represents and warrants that it shall not discriminate against any person on the basis of race, sex, color, national origin, religion, age, disability, genetic information or veteran status in the performance of this Contract.

**XII. FRAUD, WASTE & ABUSE:**

Any vendor or individual that suspects Fraud, Waste or Abuse on procurement or contracts with Texas A&M University-Texarkana may wish to report this by using the confidential hotline number (888) 501-3850 or by accessing <https://secure.ethicspoint.com/domain/media/en/gui/19681/index.html>

**XIII. PROMPT PAYMENT LAW:**

It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a

properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30<sup>th</sup> day unless a discount has been arranged for more immediate payment.

#### **XIV. INAPPLICABLE PROVISIONS:**

None of the following provisions, if they appear in the Agreement, shall have any effect or be enforceable against TAMUT: (i) requiring TAMUT to maintain any type of insurance either for TAMUT's benefit or for the Contractor's benefit; (ii) renewing or extending the initial contract term or automatically continuing or renewing the original contract term; and (iii) binding TAMUT to any arbitration, to the decision of any arbitration board, commission, panel or other entity, or to any other alternative dispute resolution other than is provided below.

#### **XV. DISPUTE RESOLUTION:**

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMUT 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. Contractor shall submit written notice of a claim of breach of contract under this Chapter to TAMUT Contracts Administration, who shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claim.

#### **XVI. ENTIRE AGREEMENT; MODIFICATIONS:**

The Agreement, as amended and supplemented by this Addendum, supersedes all prior agreements, written or oral, between Contractor and TAMUT and will constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except in writing and signed by TAMUT and Contractor.

#### **XVII. LOSS OF FUNDING:**

Performance by TAMUT under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allow the necessary funds then TAMUT will issue written notice to Contractor and TAMUT may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation of funds is beyond the control of TAMUT.

#### **XVIII. STATE AUDITOR'S OFFICE:**

Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*, Contractor agrees to cooperate with the Auditor in the conduct

of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

**XIX. INSURANCE:**

1) Contractor acknowledges that, because TAMUT is an agency of the State of Texas, liability for the tortious conduct of the agents and employees of TAMUT or for injuries caused by conditions of tangible state property is provided for solely by the provisions of the Texas Tort Claims Act (*Texas Civil Practice and Remedies Code*, Chapters 101 and 104), and that Workers' Compensation Insurance coverage for employees of TAMUT is provided by TAMUT as mandated by the provisions of Chapter 502, *Texas Labor code*. TAMUT shall have the right, at its option, to (a) obtain liability insurance protecting TAMUT and its employees and property insurance protecting TAMUT buildings and the contents, to the extent authorized by Section 51.966, *Texas Education Code*, or other law, or (b) self-insure against any risk that may be incurred by TAMUT as a result of its operations under this Agreement.

2) Contractor shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to TAMUT. By requiring such minimum insurance, the TAMUT shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under this Agreement. Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Contractor is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to TAMUT at least ten days before the effective date of the cancellation.

**Insurance:**

<b><u>Coverage</u></b>	<b><u>Limit</u></b>
<b>A. <u>Worker's Compensation</u></b>	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under on the information page of the workers' compensation policy the state in which work is to be performed for Texas A&M University – Texarkana. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

**B. Automobile Liability**

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.

**C. Commercial General Liability**

General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$ 300,000
Medical Payments	\$ 5,000

The required commercial general liability policy will be issued on a form that insures Contractor or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement

- D.** Contractor will deliver to TAMUT: Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by Contractor under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and Texas A&M University – Texarkana as Additional Insureds up to the actual liability limits of the policies maintained by Contractor. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and Texas A&M University – Texarkana. No policy will be canceled without unconditional written notice to Texas A&M University – Texarkana at least ten days before the effective date of the cancellation. All insurance policies will be endorsed to require the insurance carrier providing coverage to send notice to Texas A&M University – Texarkana ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required.

Any deductible or self-insured retention must be declared to and approved by Texas A&M University – Texarkana prior to the performance of any services by Contractor under this Agreement. Contractor is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be delivered electronically, hand delivered, or 1<sup>st</sup> class mail to TAMUT’s Contracts Office at 7101 University Avenue, Texarkana, Texas 75503 – [contracts@tamut.edu](mailto:contracts@tamut.edu)

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by Texas A&M University – Texarkana in writing.

**XX. FORCE MAJEURE:**

Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, and act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

**XXI. LIMITATIONS:**

The Parties are aware that there are constitutional and statutory limitations on the authority of TAMUT (a state agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on TAMUT’s property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’ fees; dispute resolution; indemnities; and confidentiality (collectively, the “Limitations”), and terms and conditions related to the Limitations will not be binding on TAMUT except to the extent authorized by the laws and Constitution of the State of Texas. Neither the execution of this Agreement by TAMUT nor any other conduct, action, or inaction of any representative of TAMUT relating to this Agreement constitutes or is intended to constitute a waiver of TAMUT’s or the state’s sovereign immunity to suit.

**XXII. NO FINANCIAL INTEREST:**

By executing this Agreement, Contractor and each person signing on behalf of Contractor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the

award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

**XXIII. ADDENDUM CONTROLLING:**

In the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control.

**XXIV. NON-WAIVER PROVISION:**

Contractor expressly acknowledges that TAMUT is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMUT of its right to claim such exemptions, privileges, and immunities as may be provided by law.

**XXV. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL:**

To the extent that Texas Government Code, Chapter 2270 applies to this Agreement, Vendor/Contractor certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. Vendor/Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**XXVI. CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS:**

Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Contractor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed, intending thereby to be legally bound.

**CONTRACTOR**

**TEXAS A&M UNIVERSITY  
-TEXARKANA**

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

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

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

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

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

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

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

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

ADD THE FOLLOWING IF APPLICABLE:

**PREVIOUS EMPLOYMENT:**

Contractor acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits TAMUT from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If Contractor is an individual, by signing this Agreement, Contractor certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

**ACCESS BY INDIVIDUALS WITH DISABILITIES:**

**[NOTE: TO THE EXTENT THAT CONTRACTOR PROVIDES ELECTRONIC AND INFORMATION RESOURCES AND ALL ASSOCIATED INFORMATION, DOCUMENTATION, AND SUPPORT, THE FOLLOWING PARAGRAPH SHOULD BE INSERTED;]**

Contractor represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to TAMUT under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the *Texas Administrative Code* and Title 1, Chapter 206, §206.70 of the *Texas Administrative Code* (as authorized by Chapter 2054, Subchapter M of the *Texas Government Code*.) To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply, then Contractor represents and warrants that it will, at no cost to TAMUT, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs. In the event that Contractor fails or is unable to do so, then TAMUT may terminate this Agreement and Contractor will refund to TAMUT all amounts TAMUT has paid under this Agreement within thirty (30) days after the termination date.