



THE TEXAS
STATE
UNIVERSITY
SYSTEM

REQUEST FOR QUALIFICATIONS

From Professional Service Providers

Request for Qualifications (“RFQ”) No: 758-22-00074

FOR

Construction Audit Services

ALL RESPONSES MUST BE RECEIVED NO LATER THAN:

Tuesday, March 15, 2022, AT 2:30 PM CENTRAL

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Issue Date: 02/01/22

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Section 1 – General Information

1.1 OBJECTIVE

The Texas State University System is soliciting responses from qualified audit firms (“**Respondents**”) to submit qualifications in response to this Request for Qualifications (“**RFQ**”) in order to provide the audit services (the “**Services**”) described in Section 5 of this RFQ.

This solicitation sets forth, at a minimum, the specifications, terms, conditions, and requirements to be considered for this solicitation. The System will select the Response(s) that offers the “best value” based on the published selection criteria and on its ranking / evaluation of submitted Responses.

1.2 DESCRIPTION OF THE SYSTEM

The Texas State University System, founded in 1911, is the first higher education system that was established in Texas. Beginning as an administrative means to consolidate the support and management of state teacher colleges, The System has evolved into a network of higher education institutions stretching from the Texas–Louisiana border to the Big Bend region of West Texas. Throughout The System, faculty and staff are preparing students to work in and contribute to our global society.

The System includes the system administration office (**TSUS Administration**) and seven (7) component institutions (**Component Institutions**) that offer a broad range of academic and career opportunities:

- TSUS Administration
- Lamar University
- Sam Houston State University
- Sul Ross State University
- Texas State University
- Lamar Institute of Technology
- Lamar State College Orange
- Lamar State College Port Arthur

The Texas State University System is governed by a nine-member Board of Regents appointed by the governor. In addition, a nonvoting student regent is appointed annually to the board. TSUS Administration, which is led by a board-appointed chancellor, is based in Austin, where it provides support to the Component Institutions and state government.

1.3 BACKGROUND & SPECIAL CIRCUMSTANCES

The purpose of the RFQ is to identify audit firms that specialize in construction audits. The ideal time frame to complete these types of audits is when a project is at substantial completion, prior to the final payment application. It is expected that 2-4 audits will be required

during each year of the contract term. Selected Respondents must demonstrate competence and successful experience with similar types of engagements. Previous experience with construction projects undertaken by the State of Texas and its institutions of higher education is preferred.

1.4 CONTRACT TERM

The base contract term shall be for three (3) years, beginning on the effective date of the Agreement. The System may renew the contract for up to two (2) additional one (1) year renewal terms.

The System intends for Services to be provided seamlessly during any transitional time that may be required after award, if any, of this RFQ. The selected firm must allow time to put in place any staffing, equipment or supplies required to begin providing the Services as of September 1, 2022.

Notwithstanding the foregoing, the term of any Agreement resulting from this RFQ is subject to the annual renewal by the State Auditor's Office of the delegation of authority permitting The System to contract with the selected Respondent(s). Should this delegation of authority not be renewed, The System shall so inform Auditor and the Agreement shall immediately terminate.

1.5 SCHEDULE OF EVENTS

- A. Issue RFQ on or about: **February 1, 2022**
- B. Last Day for questions: **February 17, 2022**
- C. Responses due: **March 15, 2022, at 2:30 p.m. (Central Time)**
- D. Anticipated Contract Start Date: Week of September 1, 2022

1.6 CLASS AND ITEM (NIGP) CODES

The related Class and Item code(s) for the services requested are: 918-04, 946-20

1.7 GROUP PURCHASING AUTHORITY

Texas law authorizes institutions of higher education (defined by Section 61.003, Education Code) to use the group purchasing procurement method (ref. Section 51.9335, Education Code). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Respondent(s) under this RFQ.

Texas institutions of higher education ("IHEs") routinely evaluate whether a contract resulting from a procurement conducted by another IHE might be suitable for use, and if so, this RFQ could give rise to additional purchase volumes. Any purchases made by other IHEs based on this RFQ will be the sole responsibility of those IHEs.

Section 2 – Notice to Respondents

2.1 PUBLIC INFORMATION

All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act (*Texas Government Code*, Chapter 552.001, et seq.) after the solicitation is completed.

- 2.1.1 The System 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*, Chapter 552, and *Texas Government Code*.
- 2.1.2 Respondent is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise exempted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.
- 2.1.3 Information provided to Respondent by The System, including information from representatives of TSUS or any of its Component Institutions, and information provided to Respondent by members of the public or any other third party shall belong to The System.
- 2.1.4 Information created or otherwise produced by Respondent shall remain the exclusive property of Respondent. Respondent acknowledges any final report or papers will be provided in accordance with this RFQ, and that any information contained in any report or papers, which Respondent believes is confidential under Texas law will be clearly designated as such by Respondent.
- 2.1.5 If The System receives a request for public information for any portion of any final report or papers that have been designated by Respondent to be confidential, The System will provide notice to Respondent and Respondent may submit a brief to the Office of the Attorney General, as provided by Chapter 552, Tex. Govt. Code.

2.2 POINT OF CONTACT

The System designates the following person as its representative and Point of Contact for this RFQ:

Jenn DeLeon
Email: Jennifer.deleon@tsus.edu

The System instructs interested parties to restrict all contact and questions regarding this RFQ to **written** communications with the Point of Contact. Discussions (written or verbal) related to the services in this RFQ with parties other than the Point of Contact are grounds for Respondent disqualification.

2.3 RESPONDENT QUESTIONS

Respondents will have until **Thursday, February 17, 2022** (the “**Question Deadline**”) to submit written questions, including questions regarding terms and conditions or for clarification of the RFQ, to The System’s Point of Contact (ref. **Section 2.2**). All questions submitted and received prior to the deadline will be reviewed, consolidated where possible, and answered in a written addendum. The addendum will be posted on the Texas Electronic State Business Daily (“**ESBD**”) at: <http://www.txsmartbuy.com/sp>. Enter “**758**” in the **Agency Number** field to search ESBD for The Texas State University System solicitations. The System will provide responses as soon as practicable following the Question Deadline however, The System reserves the right to decline to respond to any question. It is the Respondent's responsibility to continually check the ESBD for Addenda.

2.4 CLARIFICATIONS AND INTERPRETATIONS

Any clarifications or interpretations of this RFQ that materially affect or change its requirements will be issued formally by The System as a written addendum. Addenda, if required, will be issued by The System and posted on the ESBD (ref. **Section 2.3**). It is the responsibility of all Respondents to check the status of formal addenda before the submission deadline and to obtain this information in a timely manner. The System intends to issue any required addenda a minimum of five (5) business days prior to the Submittal Deadline (ref. **Section 3.1**) to allow time for Respondents to review information and complete responses. All such addenda issued by The System must be acknowledged by Respondents and incorporated into the RFQ response (ref. **Section 6**).

2.5 EVALUATION OF RESPONSES

It is the intent of The System to award a contract to the responsible, responsive Respondent(s) that submits a Response that meets the minimum criteria set forth herein, and that represents the best value to The System. All properly submitted Responses will be reviewed, evaluated, and ranked by The System. Responses will be evaluated by a review panel based on the criteria and relative criteria weights listed in this RFQ. Only criteria designated in the solicitation can be considered in the award determination.

Two-Step Process: The System will (1) select the most highly qualified Respondent(s) based on Respondent’s demonstrated competence and qualifications, and (2) then attempt to negotiate a fair and reasonable price for the Services.

2.5.1 Criteria for Qualification Determination: The criteria to be considered by The System in evaluating Responses and selecting qualified Respondents, will be those factors provided in **Section 8** of this RFQ. Upon review of Responses, The System will determine an initial ranking of the Respondents. If the initial ranking of the Respondents is reasonably conclusive, The System may make a “most qualified” selection based solely upon the written qualifications. If not, then The System may conduct interviews with a “short list” of top-ranked Respondents.

2.5.2 Interviews: Upon completion of the initial review, evaluation, and ranking of the Responses, The System may invite one or more Respondents within the competitive

range, at the Respondent's expense, to give an oral interview and / or written presentation and respond to questions. Interviews, at The System's discretion, may be held either on site at the TSUS Administration offices in Austin, Texas or by video conference.

- 2.5.3 Fees: Responses should not include any information regarding Respondent's proposed fees, pricing, or other compensation considerations as these will not be a factor in the selection of the best qualified Respondent(s). The System will request the detailed professional service fees during the negotiation process after selecting the most qualified Respondent(s).

2.6 AWARD OF CONTRACT

- 2.6.1 A response to this RFQ is an offer to contract based upon the terms, conditions and specifications contained herein. Responses do not become contracts until they are accepted through a purchase order or fully executed contract. Any contract shall be governed, construed and interpreted under the laws of the State of Texas, and TSUS policy as the same may be amended from time to time. Any legal actions must be filed in Travis County, Austin, Texas.
- 2.6.2 Section 2254.029(b) Notice: Pursuant to Section 2254.029(b) of the Texas Government Code, notice is given that the services sought in this solicitation relate to services previously provided by a firm, and that The System intends to award the contract for the Services to the firm that previously provided the services, unless a better offer is received.
- 2.6.3 Multiple Awards and Utilization: It may be determined that having the Services provided by multiple Respondents is more advantageous to The System. The System reserves the right to make multiple awards against this RFQ. The System will only pay for Services utilized and makes no guarantee of a maximum amount to be paid over the course of any contract that may result from the RFQ.
- 2.6.4 No Guarantee of Award: The System makes no warranty or guarantee that an award will be made as a result of this RFQ. The System reserves the right to accept or reject any or all Responses, waive any formalities or minor technical inconsistencies and delete any requirement or specification from this RFQ or the Agreement when deemed to be in The System's best interest. The System reserves the right to seek clarification of any item contained in Respondent's Response prior to final selection. Such clarification may be provided by telephone or personal meeting with or in writing to The System, at The System's discretion. Representations made by Respondent within its Response will be binding on Respondent. The System will not be bound to act by any previous communication or response submitted by Respondent, other than this RFQ.

2.7 THE SYSTEM'S RESERVATION OF RIGHTS

The System may evaluate the Responses based on the anticipated completion of all or any portion of the Project. The System reserves the right to divide the Project into multiple parts, to reject any and all Responses and re-solicit for new Responses, or to reject any and all Responses and temporarily or permanently abandon the Project. The System makes no

representations, written or oral, that it will enter into any form of agreement with any Respondent to this RFQ for any project and no such representation is intended or should be construed by the issuance of this RFQ.

2.8 ACCEPTANCE OF EVALUATION METHODOLOGY

By submitting its Response to this RFQ, Respondent accepts the evaluation process and acknowledges and accepts that the determination of the “best value” firm(s) will require subjective judgments by The System.

2.9 NON-REIMBURSEMENT FOR COSTS

Respondent acknowledges and accepts that any costs incurred from the Respondent’s participation in this RFQ process shall be at the sole risk and responsibility of the Respondent. Respondents submit Responses at their own risk and expense.

2.10 CONFLICTS / CONTACT

Respondents shall not contact existing members of the TSUS Board of Regents, The System employees, including those of Component Institutions, about this RFQ until the resulting contract(s), if any, is fully executed.

2.11 OWNERSHIP AND USE OF WORK MATERIAL

All work material, whether accepted or rejected by The System, is the sole property of The System and for its exclusive use and re-use at any time without further compensation and without any restriction.

2.12 TERMINATION / CANCELLATION

The System may terminate any resulting agreement for any reason, including material changes to selected Respondent’s firm, upon thirty (30) days written notice to the other party.

2.13 CERTIFICATE OF INTERESTED PARTIES

Pursuant to Texas Government Code 2252.908 and Texas Ethic Commission Rule 46, for contracts that either have a value of at least \$1 million or require approval of the TSUS Board of Regents, a business entity (vendor) must submit a copy of the Disclosure of Interested Parties (Texas Ethics Commission Form 1295) filed with the Texas Ethics Commission when the business entity submits the signed contract. No such contract may be presented to the TSUS Board of Regents for approval without the disclosure. By submitting a Response to this RFQ, Respondent agrees to comply with this law. Information on the Disclosure of Interested Parties can be found at: https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

Section 3 – Requirements of Response

3.1 RESPONSE SUBMITTAL DEADLINE AND LOCATION

The System will receive Responses for this RFQ at the time and location described below. The Respondent (not The System, the carrier, mail service/courier, or other party) is solely responsible for ensuring that the Response is received by the Point of Contact, in the format described below (ref. Section 3.3), **prior** to the specified due date and time noted in this Section.

Submittal Deadline: Tuesday, March 15, 2022, at 2:30 PM CENTRAL

The Texas State University System
Attn: Jenn DeLeon
601 Colorado Street
Austin, Texas 78701
Re: RFQ 758-22-00074

NOTE: A public opening of responses will not be conducted for this RFQ.

3.2 HISTORICALLY UNDERUTILIZED BUSINESSES

It is the policy of The System to promote and encourage contracting and subcontracting opportunities for Historically Underutilized Businesses (“**HUBs**”). Accordingly, The System has adopted a policy on the Utilization of Historically Underutilized Businesses. The policy applies to all contracts with an expected value of \$100,000 or more. If The System determines that subcontracting opportunities are probable, then a HUB Subcontracting Plan is a required element of the Response. Failure to submit a required HUB Subcontracting Plan form will result in rejection of the Response.

3.2.1 The System has determined that subcontracting opportunities are not probable under this RFQ.

3.2.2 A HUB Subcontracting Plan is not required for this RFQ.

3.3 RESPONSE FORMAT AND REQUIRED COPIES

3.3.1 **Unacceptable Response Delivery Methods:** The System will not accept Responses to this RFQ that are submitted by telephone, facsimile (fax) transmission, or electronic mail.

3.3.2 **Response Envelope / Box / Container:** Response must be placed in a sealed envelope, box, or container that is completely and properly identified with the name of Respondent’s firm and the RFQ number, due date and time. It is the Respondent’s responsibility to have the Response correctly marked, addressed and delivered to The System by the Submittal Deadline for receipt by the Point of Contact.

- 3.3.3 **Format for Response:** Respondent shall make every effort to present the required information in a detailed, orderly, and compact presentation. Respondent should provide visual examples of functionality to clarify and reinforce key product features and services. Long or elaborate Responses are not desired. Sections will be tabbed and clearly labeled for ease of review and evaluation.

Respondent should submit the complete Responses, both the paper and electronic copies, using a format substantially like the following in terms of order of content:

- A. Cover Page
- B. Table of Contents
- C. Executive Summary of Response
- D. Execution of Offer (ref. **Section 6**)
- E. Respondent's Questionnaire (ref. **Section 7**)
- F. Qualification Criteria (ref. **Section 8**)
- G. General Terms & Conditions of Contract (ref. **Section 9**)
- H. Supplemental Information: Respondent may submit any additional information Respondent feels is relevant to the Response. This information must be clearly labeled as "Supplemental Information" and in a separate tabbed section of the Response.

NOTE: Respondents are responsible for submitting all required information as requested in this RFQ. The above listing of items to be included in the Response submission is a summary provided to aid Respondents in putting together the Response package. Any items stated in other Sections of the RFQ, but not listed in this Section, are still required to be provided as part of the Response submission.

- 3.3.4 **Required Copies:** Respondent must submit (a) one (1) complete paper copy of its entire Response, and (b) one (1) USB flash drive with the individual and separate files as described below. The USB flash drive must include a protective cover that is labeled with Respondent's name and the RFQ number. An *original* signature by an authorized officer of Respondent's firm must appear on the Execution of Offer (ref. **Section 6**) included in the submitted Responses, both paper and electronic.

The USB flash drive must contain the following two (2) individual and separate files:

- A. One (1) complete electronic copy of the entire Response, in a single .pdf file
- B. One (1) redlined electronic copy of APPENDIX ONE, if applicable, in an editable format (i.e., Microsoft Word)

3.4 EXECUTION OF OFFER

Respondent must complete, sign and return the attached Execution of Offer (ref. **Section 6**) as part of the Response. The Execution of Offer must be signed by an authorized officer of Respondent's firm duly authorized to bind the Respondent to its Response. Failure to sign and return the Execution of Offer will result in the rejection of the Response.

3.5 RESPONDENT'S QUESTIONNAIRE

Respondent must completely answer all questions asked in **Section 7** (Respondent's Questionnaire). By submitting a Response, Respondent certifies that, to the best of its knowledge, all responses are true, correct and complete.

3.6 QUALIFICATION CRITERIA

Respondent must completely answer all questions asked in **Section 8** (Qualification Criteria). By submitting a Response, Respondent certifies that, to the best of its knowledge, all responses are true, correct and complete.

3.7 GENERAL TERMS AND CONDITIONS OF CONTRACT

Respondent must completely answer all questions asked in **Section 9** (General Terms and Conditions of Contract). Any proposed changes or additions to The System's intended agreement for the Services (ref. **APPENDIX ONE**) must be submitted with Respondent's Response in the form of a redlined APPENDIX ONE with track changes engaged and comments to support Respondent's requested change(s) included.

3.8 VALIDITY PERIOD

By submitting a Response to this RFQ, Respondent accepts that the Response will remain valid for a minimum of one hundred twenty (120) days after the submittal deadline to allow time for evaluation of Responses, award determination, and any unforeseen delays.

Section 4 – Terms & Conditions of Response

The items below apply to and become a part of Response. Exceptions cannot be taken to the RFQ document itself, nor can it be redlined. These actions may result in Respondent's disqualification. Only additions / modifications to **APPENDIX ONE** (ref. **Section 9**) will be subject to consideration by The System.

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

4.1 RESPONSE REQUIREMENTS AND GENERAL INSTRUCTIONS

- 4.1.1 **Rules, Regulations & Statutes:** The System is an agency of the State of Texas. Respondents must comply with all rules, regulations, and statutes relating to purchasing of the State of Texas, The Texas State University System Rules and Regulations, in addition to the Terms and Conditions of this form. Upon engagement, any successful Respondent shall confirm its compliance with all necessary State and / or Federal requirements relative to work performed.
- 4.1.2 **Submittal Deadline Exception:** If TSUS Administration is closed due to inclement weather and / or emergency situations on the designated Submittal Deadline, the Submittal Deadline will default to the next open business day at the same time.
- 4.1.3 **Late or Unsigned Responses:** Late and / or unsigned Responses will not be considered under any circumstances. The person signing the Response must have the authority to bind Respondent's firm in a contract. The Respondent (not The System, the carrier, mail service / courier, or other party) is solely responsible for ensuring that the complete Response is received by TSUS Administration prior to the specified opening date and time.
- 4.1.4 **FOB Designation:** Shipping terms will be FOB Destination, freight prepaid and allowed unless otherwise stated within the specifications.
- 4.1.5 **Tax Exempt:** Purchases made for State use are exempt from the State Sales tax and Federal Excise tax, per Texas Tax Code, Section 151.309(4).
- 4.1.6 **Right to Accept or Reject:** The System reserves the right to accept or reject all or any part of any Response, waive minor technicalities and award the Response to best serve the interests of The System and the State of Texas.
- 4.1.7 **Withdrawal:** Any Response may be withdrawn prior to the date and time set for receipt of Responses. Any Response not so withdrawn shall constitute an irrevocable offer, for a period of 120 days, to provide the commodity or service set forth in the specifications, or until a selection has been made by The System.

- 4.1.8 **Response Costs:** Respondents electing to respond to this RFQ are responsible for any and all costs of Response preparation. The System is not liable for any costs incurred by a Respondent in response to this RFQ.
- 4.1.9 Responses that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFQ in any way; or (iii) contain irregularities of any kind, are subject to disqualification by The System, at The System's sole discretion.
- 4.1.10 Any Response that fails to comply with the requirements contained in this RFQ may be rejected by The System, at The System's sole discretion.

4.2 SPECIFICATIONS

- 4.2.1 **Oral Statements:** The System will not be bound by any oral statement or representation contrary to the written specifications of the RFQ.
- 4.2.2 **Secure Erase of Hard Disk Capability:** Any equipment provided to The System that is equipped with hard disk drives (i.e., computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC § Chapter 202.

4.3 NON-DISCLOSURE

No public disclosures or news releases pertaining to this RFQ shall be made without prior written approval of The System.

4.4 CONFLICTS

In event of a conflict between standard Response requirements and conditions and the attached detailed specification, the detailed specification shall govern.

4.5 RESPONDENT AFFIRMATION

Submitting a Response with a false statement is material breach of contract and shall void the submitted Response or any resulting contracts, and the Respondent shall be removed from all Response lists. By submitting a Response, the Respondent herein affirms:

- 4.5.1 **Vendor Ethics - Gratuities:** As an agency of the State of Texas, The System holds the trust of the public. All Respondents and persons doing business with The System must provide the highest level of ethics and service in all business interactions. A Respondent shall not give, offer to give, nor intend to give at any time any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to an employee of The System that might reasonably appear to influence the employee in the discharge of official duties. The System may, by written notice to the Respondent, cancel any resulting contract without incurring liability if it determined that

gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Respondent, or any agent or representative of the Respondent, to any officer or employee of The System or its Components with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event any contract resulting from this RFQ is cancelled by The System pursuant to this provision, The System shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Respondent in providing such gratuities.

- 4.5.2 If Respondent is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Respondent certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Respondent is exempt from the payment of those taxes, or that Respondent is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 4.5.3 Neither the Respondent nor the firm, corporation, partnership, or institution represented by the Respondent, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State or the Federal Antitrust Laws nor communicated directly or indirectly the Response made to any competitor or any other person engaged in such line of business.
- 4.5.4 Under Section 2155.004, Texas Government Code, a state agency may not accept a Response 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 Qualifications on which the Response or contract is based. By submitting a Response to this RFQ, Respondent certifies and affirms that: 1) Respondent has not received compensation for participation in the preparation of the specifications for this RFQ; and 2) 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.
- 4.5.5 If applicable, pursuant to Texas Family Code, Title 5, Subtitle D, Section 231.006(d), regarding child support, the Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that any contract resulting from this RFQ may be terminated, and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006 must include the names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Response. If awarded this RFQ, Respondent will provide this information to The System prior to contract execution.
- 4.5.6 Pursuant to Section 2155.004 Government code regarding collection of state and local sales and use taxes, the Respondent certifies that the individual or business entity named in this Response is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and/or payment withheld if this certification is inaccurate.

4.5.7 Respondent agrees that any payments due under any resulting contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

4.5.8 Respondent certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with the executive head of a State agency. If Section 669.003 applies, Respondent will submit the following information in response to this Section with their response in order for the Response to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of separation from State Agency: _____

Position with Respondent: _____

Date of Employment with Respondent: _____

4.5.9 Respondent represents and warrants that Respondent's provision of services or other performance under any contract resulting from this RFQ will not constitute an actual or potential conflict of interest and represents and warrants that it will not reasonably create even the appearance of impropriety.

4.5.10 Respondent and any of its principals (including, but not limited to, an owner, proprietor, sole or majority shareholder, director, president, or managing partner) are not debarred, suspended, or otherwise excluded from doing business with The System.

4.5.11 Respondent certifies that if a Texas address is shown as the address of the Respondent on its Response, Respondent qualifies as a Texas Bidder as defined in Section 2252.001(4) of the Texas Government Code.

4.6 TERMS AND CONDITIONS ATTACHED TO RESPONSE

Any terms and conditions attached to the Response will not be considered unless referred to in the Response (ref. **Section 9**).

Section 5 – Scope of Work

The purpose of this RFQ is to solicit Responses to enter into a contract with a qualified and experienced firm(s) to obtain timely and professional Services as described herein. The successful Respondent, if any, is referred to as the “**Contractor**.” Services described in this RFQ will be provided to, and on behalf of, TSUS Administration.

Respondents shall submit a complete response to all requirements and specifications set forth in this RFQ. Respondents may expand or offer any additional suggestions and / or services that their firm feels may benefit The System in addition to the requirements listed in this RFQ (ref. **Section 7.4**).

The request of Services by The System will be on an “as required” basis with no assurance of any minimum amount of work. The System contemplates that 2-4 audits per year will be initiated under the Agreement. Contractor will be expected to work with The System in determining the specific scope for each engagement.

Project Engagement: No work shall be initiated by Contractor unless specifically authorized by The System in the form of an executed Engagement Letter (ref. **APPENDIX ONE**). Each Engagement Letter will delineate the specific tasks to be accomplished, the estimated period within which the Services will be performed and shall contain a “Not to Exceed” price / amount.

Contractor will provide the following Services to The System:

5.1 Contractor will provide construction audit services on a project-by-project basis, as required, and as requested by The System, for Component Institution construction projects. Contractor will assign experienced personnel as needed to provide the Services.

5.2 Audit work will include, but is not limited to:

5.2.1 Reviewing all related documents to identify potential deception and / or fraud.

5.2.2 Confirming compliance with the terms of the Contract Manager at Risk (CMR) and / or Design Build (DB) contracts.

5.2.3 Confirming adherence to the approved schedule and budget of active projects.

5.2.4 Specific items that may be considered for any engagement include, but are not limited to:

- A. prevention of the "ghosting" of payroll,
- B. verification of change order billings in accordance with the Uniform General Conditions,
- C. analysis of leased equipment contracts for non-compliant charges,
- D. review of all subcontracts to verify that values and scopes are in line with the Guaranteed Maximum Price (GMP) proposals,

- E. review for double coverage pertaining to insurance and / or general conditions to the contract,
- F. assistance in the recovery of losses from any subsequent engagement,
- G. review / validation of any claims made against a project,
- H. analysis of RFIs, submittals, Architect's Supplemental Instructions and other associated logs and schedules, and
- I. any other similar activities that would be beneficial to The System to ensure compliance with the applicable agreement.

5.2.5 All work must be performed in accordance with any applicable guidelines and procedures set forth by the State Auditor's Office, and under the general auspices of the TSUS Office of Internal Audit.

5.2.6 Auditor reports prepared under the Agreement will follow distribution processes utilized by the TSUS Office of Internal Audit.

5.3 Project Engagement

5.3.1 To request Services, The System's Contract Manager, or his / her designee, shall notify the designated Point of Contact at Contractor's Firm and identify the specific scope and nature of Services requested.

5.3.2 Contractor and The System will agree upon the specific scope of services required for the project and a not-to-exceed estimate of the fees required based on the project scope. Contractor will provide a written quote, in the form of the project Engagement Letter.

5.3.3 Should the project scope be changed, by mutual written agreement of The System and Contractor, a revised estimate shall be provided to The System for approval followed by the issuance of a revised Engagement Letter.

5.4 Project Deliverables

5.4.1 The deliverables shall be agreed between Contractor and The System but shall include one or more preliminary written audit reports with specific recommendations, and a final written audit report with specific recommendations.

5.4.2 The final report will include The System and / or Component responses to the recommendations.

5.4.3 All reports issued by Contractor will be marked "preliminary" until the issuance of the final report with respect to any project.

5.4.4 Upon completion of Services for each project, Contractor will deliver an electronic copy of the final deliverable to The System.

5.5 Billable Time

- A. Billable time for dedicated hours of work includes, but is not limited to, travel time; communications and meetings with The System, external parties, and between Contractor staff; review of electronic correspondence and attachments; research; analysis; planning; budgeting and other administrative tasks performed to support The System.
- B. Billable time will be tracked by Contractor and rounded to the nearest quarter hour. (Note: Contractor will submit tracking information with invoices as support for payment amounts.)

5.6 Perform additional duties, tasks or services not specifically identified but related to the Services described in this RFQ if needed and when mutually agreed upon in writing by both parties.

Section 6 – Execution of Offer

Respondent shall complete, sign, and submit this Execution of Offer with their Response. The Execution of Offer must be signed by an authorized officer of Respondent duly authorized to bind the Respondent to its Response. Failure to sign the Execution of Offer will result in the rejection of Response.

- 6.1 In compliance with this RFQ, and subject to all the conditions herein, the undersigned offers and agrees to furnish any and all commodities or services requested in this RFQ and further described in the Response.
- 6.2 By signature hereon, the offeror hereby certifies that he/she is not currently delinquent in payment of any franchise taxes owed the State of Texas under Chapter 11, Tax Code.
- 6.3 By signature hereon, offeror represents and warrants that he/she has not given, offered, or intends to give at any time hereafter, any economic opportunity, future employment, gift loan, gratuity, special discount, trip, favor, or service to public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the offeror shall be removed from all bid lists.
- 6.4 By signature hereon, the offeror hereby certifies that neither the offeror or the firm, corporation, partnership, or institution represented by the offeror or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et. seq., Texas Business and Commerce Code, or the Federal anti-trust laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business.
- 6.5 By signature hereon, offeror represents and warrants that:
 - 6.5.1 Respondent is a reputable individual or company regularly engaged in providing the services necessary to meet the terms, conditions, and requirements of this RFQ;
 - 6.5.2 Respondent has the necessary experience, knowledge, abilities, skills, and resources to satisfactorily perform the terms, conditions, and requirements of this RFQ.
 - 6.5.3 Respondent is aware of, is fully informed about, and is in full compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances.
 - 6.5.4 Respondent, if selected by The System, will maintain insurance as required by the Contract.
 - 6.5.5 All statements, information and representations prepared and submitted in response to this RFQ are current, complete, true, and accurate. Respondent acknowledges that The System will rely on such statements, information, and representations in selecting the successful Respondent. If selected as the successful Respondent, Respondent will

notify The System immediately of any material change in any matters with regard to which Respondent has made a statement or representation or provided information.

6.6 By signature hereon, offeror certifies that no relationship, whether by relative, business associate, capital funding agreement or by any other such kinship exist between Respondent and an employee The System, or Respondent has not been an employee of The System within the immediate twelve (12) months prior to Respondent's RFQ response. All such disclosures will be subject to administrative review and approval prior to The System entering any contract with Respondent.

6.7 Acknowledgement of Addenda: The undersigned Respondent hereby acknowledges receipt of the following Addenda issued as a part of this solicitation (initial only if applicable).

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

Note: If there was only one (1) Addendum issued, initial just the first blank after No. 1, not all five (5) blanks above.

Federal Employer Identification Number (FEIN): _____

Respondent/Company: _____

Signature: _____ Date: _____

Name (typed/printed): _____

Title: _____

Address: _____

Telephone Number: _____ E-mail: _____

Section 7 – Respondent’s Questionnaire

The Respondent recognizes that in selecting a Contractor, The System will rely in part on the answers provided in response to this Section. Accordingly, Respondent certifies that to the best of its knowledge, all responses are true, correct, and complete. All Responses submitted must contain full and complete responses to each of the following questions about Respondent’s firm (“**Company**”). Respondent must demonstrate the ability to successfully provide the Services. Failure to respond to any item listed may disqualify the Response. To be considered, Respondent must address and include a response to each question in this Section in their Response in the order asked and following the same numbering format.

7.1 COMPANY PROFILE

7.1.1 Provide the following information:

Legal name of Company	
Federal Tax ID #	
State of incorporation	
Identify the organizational status of the Company (i.e., corporation, partnership, or sole proprietorship). Include: <ul style="list-style-type: none"> • date of incorporation, • name of corporate president / principals 	
Address of principal place of business	
Address of office that would be providing service under the Agreement	
Number of Employees	
Name of Parent Corporation (if any)	

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

- 7.1.2 State whether Respondent will provide a copy of Company financial statements for the past two (2) years, if requested by The System.
- 7.1.3 Is the Company is licensed to solicit business in the State of Texas? If yes, include a copy of the license(s).
- 7.1.4 Disclose any relationships between Company and employees of The System:
- A. Is there any current or past relationship(s), including familial relationships through marriage or consanguinity, business relationships, capital-funding agreements or arrangements, or any other such similar business or personal relationship(s), between the Company and any employee, officer or Regent of The Texas State University System, including Component Institutions? If yes, please explain.
 - B. Does the Company have any current or former employees who are/were employees of TSUS Administration or any Component Institution? If yes, please explain.
 - C. Does the Company have any proposed personnel who are, or are related to, current or former employees of TSUS Administration or any Component Institution? If yes, please explain.
- 7.1.5 Provide the name, title, email and telephone number of the individual who will serve as the primary day-to-day contact for The System should a contract be awarded to Company.

7.2 QUALITY OF SERVICE

- 7.2.1 Discuss how Company maintains relationships with clients and provides high-level customer service to clients.
- 7.2.2 Describe the Company's plan to maintain effective communication with The System.
- 7.2.3 Describe the types of reports or other written documents Company will provide (if any) and the frequency of reporting, if more frequent than required in this RFQ. Respondent will include samples of reports and documents if appropriate.

7.3 MISCELLANEOUS

- 7.3.1 Provide a list of any additional services or benefits not otherwise identified in this RFQ that Respondent would propose to provide to The System. Additional services or benefits must be directly related to the goods and services solicited under this RFQ.
- 7.3.2 Provide details describing any unique or special services or benefits offered or advantages to be gained by The System from doing business with Company. Additional services or benefits must be directly related to the goods and services solicited under this RFQ.

7.3.3 Describe, or provide a copy of, Company's contingency plan or disaster recovery plan in the event of a disaster.

7.4 ADDITIONAL CONSIDERATIONS

Describe any additions or changes to the Scope of Work that Company would suggest in order to successfully meet the objective of this RFQ or that may be of benefit to The System. Any additions, changes or suggestions should be clearly described and defined, and included in Agreement redlines (ref. **Section 9**), for The System's consideration. The System reserves the right to incorporate any such additions, changes or suggestions into the Agreement.

Section 8 – Qualification Criteria

The Respondent recognizes that in selecting a Contractor, The System will rely in part on the answers provided in response to this Section. Accordingly, Respondent certifies that to the best of its knowledge, all responses are true, correct, and complete. The System reserves the right to contact each reference or contact name listed in response to this RFQ at any time and shall be free from any liability to Respondent for conducting such inquiry.

Narratives provided in response to the criteria listed below must address the specific items noted with each criterion. Respondent must demonstrate the ability to successfully provide the Services. Respondent can also include additional information Respondent believes The System should know when determining qualifications. **Respondent's response to this Section of the RFQ cannot exceed a maximum of 50 pages.**

Per **Section 2.5** the relative weights to the Qualification Criteria are as follows:

Criteria	Weight
General Capabilities	15%
Vendor Experience	50%
Team Member Qualifications	35%
Total:	100%

To be considered, Respondent must address and include a response to each question in this Section in their Response in the order asked and following the same numbering format. Failure to respond to any item listed may disqualify the Response.

8.1 GENERAL CAPABILITIES

8.1.1 Provide information that demonstrates Respondent's general capabilities to perform the Services requested in this RFQ. At a minimum, the response should provide the following information about Respondent's firm:

- A. Brief history of the firm (including number of years providing the Services requested in this RFQ)
- B. Organizational structure and number of employees per area
- C. Information on firm's financial stability
 - Firm's financial rating?
 - Is firm currently for sale or involved in any transaction to expend or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
 - Is firm currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.
- D. Provide any details of all past or pending litigation or claims filed against the firm that would negatively impact Respondent's performance under any agreement with The System.

8.2 VENDOR EXPERIENCE

- 8.2.1 Provide a statement of interest for the project including a narrative describing the Respondent's unique qualifications as they pertain to construction audit services.
- 8.2.2 Provide references for up to five (5) of Respondent's customers from the past five (5) years for projects that are similar in scope, size, and complexity to the Services described in this RFQ. Any projects with The System, other public institutions of higher education, or other Texas state agencies should be included. List the projects in order of priority, with the most relevant project listed first. Provide the following information for each customer:
- A. Customer name and address
 - B. Contact name with email address and phone number
 - C. Time period in which work was performed
 - D. Length of business relationship with customer
 - E. A short description of construction audit work performed including but not limited to:
 - Construction Project, location of construction project, and contract delivery method.
 - Type of construction (new, renovation, or expansion).
 - Final Construction Cost, including Change Orders.
 - Final project size in gross square feet.

8.3 TEAM MEMBER QUALIFICATIONS

- 8.3.1 Provide résumés for proposed key personnel that will be assigned to perform the Services. Resumes should include, at minimum: name, title, professional certifications, area of responsibility in Respondent's firm, expected role in performance of the Services, type and years of experience, education, length of employment with Respondent's firm, city of residence, and specific experience as it pertains to the Services.
- 8.3.2 Provide a statement on the availability and commitment of the Respondent and its principal(s) and assigned professionals to undertake the project.
- 8.3.3 Indicate whether the Respondent intends to subcontract any of the work associated with the performance of the Services. If so, describe the roles of such subcontractors and Respondent's process in working with and integrating them into the successful performance of the Services.

NOTE: If Respondent intends to subcontract any of the work in this RFQ and is selected for contract award, regardless of the HUB Subcontracting Plan (HSP) submittal requirement for this RFQ (ref. **Section 3.2), Respondent must submit a completed HSP to The System prior to execution of any Agreement regardless of whether Respondent is a certified Texas HUB or not.*

Visit the Texas Comptroller of Public Account's webpage (<https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>) to download the current "[HUB Subcontracting Plan Form](#)."

SECTION 9 – General Terms & Conditions of Contract

The terms and conditions contained in the attached Agreement (ref. **APPENDIX ONE**) or, in the sole discretion of The System, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any contract that results from this RFQ.

- 9.1 If Respondent agrees with the terms and conditions set forth in **APPENDIX ONE**, Respondent will acknowledge it in writing (ref. **Section 9.3 A**)
- 9.2 If Respondent has additional terms and conditions that it proposes to include in any contract or agreement resulting from this RFQ (such as software license terms and conditions, participation forms, etc.) or if Respondent takes exception to any terms or conditions set forth in the Agreement, Respondent will acknowledge it in writing (ref. **Section 9.3 B and C**) submit a redlined **APPENDIX ONE** (in the original editable format, i.e. Microsoft Word) as part of its Response in accordance with **Section 3.3.4** of this RFQ. Respondent's additions and exceptions will be reviewed by The System and may result in disqualification of Respondent's Response as non-responsive to this RFQ. If Respondent's additions and exceptions do not result in disqualification of Respondent's Response, then The System may consider Respondent's additions and exceptions when The System evaluates the Respondent's Response. The System will not be bound by or required to accept or agree to any terms and conditions that a Respondent includes (or fails to include) in its Response.

Any addition, deletion, noted exception or other change made to the Agreement must be accompanied by a comment explaining Respondent's rationale for the edit. Failure to include all such terms and conditions in response to this RFQ (incorporated into a redlined APPENDIX ONE per Section 9.3 C below) may result in Respondent's disqualification even after an award has been made.

- 9.3 Regarding the Agreement (ref. **APPENDIX ONE**) Respondent:
- A. Agrees with the terms and conditions in the Agreement, has no additional terms and conditions or other documents to add to the agreement, and is not submitting a redlined version: **Yes: _____ No: _____**
- B. Takes exception to some of the terms and conditions and has submitted a redlined version of the Agreement for consideration: **Yes: _____ No: _____**
- C. Has submitted additional terms and conditions or other documents for consideration by The System in a new Exhibit(s) to the Agreement: **Yes: _____ No: _____**

Exceptions cannot be taken to the RFQ document itself, nor can it be redlined. These actions may result in Respondent's disqualification.

APPENDIX ONE

AGREEMENT

The draft Agreement has been prepopulated with relevant project information so Respondents can review and redline as instructed in this RFQ. Respondent can update any text in **red** that is related to Respondent's firm (e.g., contractor name, FEIN #, point of contact, signatory information, etc.).

- No edits shall be made without the track changes feature in Microsoft Word being engaged.
- No pricing information should be added to the draft Agreement.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

AGREEMENT BETWEEN
THE TEXAS STATE UNIVERSITY SYSTEM
AND
INSERT CONTRACTOR NAME

This non-exclusive agreement (**Agreement**) is entered into between *Insert Contractor Name* (**Contractor**), Federal Tax Identification Number *Insert Contractor's FEIN #*, and **The Texas State University System (The System)**, an agency and institution of higher education established under the laws of the State of Texas, and located in Austin, Texas. The number associated with this Agreement (**Agreement Number**) is: *Insert Agreement Number*.

The System includes the system administration office (**TSUS Administration**) and seven (7) component institutions (**Component Institutions**) that offer a broad range of academic and career opportunities:

- The Texas State University System Administration
- Lamar University
- Sam Houston State University
- Sul Ross State University
- Texas State University
- Lamar Institute of Technology
- Lamar State College Orange
- Lamar State College Port Arthur

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

1. Services

Contractor will perform the services (**Services**) set forth in **Exhibit A**, Scope of Work, to the satisfaction of The System and in accordance with The System's Request for Qualifications (RFQ) **#758-22-00074 Construction Audit Services** and Contractor's response to said RFQ. Services will be provided to, and on behalf of, The System. Time is of the essence in connection with this Agreement. The System will have no obligation to accept late performance or waive timely performance by Contractor.

2. Contract Term

This Agreement is effective as of the later of *insert month, day, year*, or the date Agreement is fully executed by both parties (**Effective Date**). The term (**Initial Term**) of this Agreement will begin on the Effective Date and expire on *insert month, day, year* unless earlier terminated in accordance with **Section 18**. The System will have the option to renew this Agreement for two (2) additional one (1) year terms (each a **Renewal Term**). The Initial Term and each Renewal Term are collectively referred to as the **Term**.

Notwithstanding the foregoing, the term of any Agreement resulting from this RFQ is subject to the annual renewal by the State Auditor's Office of the delegation of authority permitting The System to contract with the selected Respondent(s). Should this delegation of authority not be renewed, The System shall so inform Auditor and the Agreement shall immediately terminate.

3. Compensation

The System will compensate Contractor for services in accordance with **Exhibit B**, Pricing for Services. Total compensation to Contractor will not exceed the Contract Amount (ref. **Exhibit B, Section 1.5**) inclusive of all fees and expenses during the life of the Agreement.

The Agreement will not be effective for amounts exceeding one million dollars (\$1,000,000) unless preapproved by the Board of Regents of The Texas State University System.

4. Contractor's Obligations

- 4.1 **Permits, Certifications, and Licenses.** 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 the Services.
- 4.2 Contractor will perform Services in compliance with (a) all Applicable Laws, and (b) the Board of Regents of The Texas State University System Rules and Regulations, the policies of The Texas State University System; and the institutional rules, regulations and policies of Component Institutions (collectively, **The System 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 The System's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 4.3 Contractor will call to The System's attention in writing all information in any materials supplied to Contractor (by The System 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 The System at all times is relying on Contractor's skill and knowledge in performing Services. Contractor represents and warrants that Services 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 The System. Contractor will not be released from any liability by reason of any approval by The System.
- 4.5 Contractor will (a) use commercially reasonable efforts to perform Services in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business, and (b) all Services to be performed

will be of the quality that prevails among similar businesses engaged in providing similar services in major urban areas of the United States under the same or similar circumstances.

- 4.6 Contractor will, at its own cost, correct all material defects in Services as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in Services within a reasonable time, then The System may correct the defective Services at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Services that The System may have at law or in equity.
- 4.7 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 Services 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 Services. Contractor will furnish efficient business administration and coordination and perform Services in an expeditious and economical manner consistent with the interests of The System.
- 4.8 **Premise Rules.** If this Agreement requires Contractor's presence on The System's premises or in The System'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 The System Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.
- 4.9 **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Covered Services and payments will be available to The System or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Covered Services, unless The System or Component Institution otherwise instructs Contractor in writing.
- 4.10 **Responsibility for Individuals Performing Services.** Each individual who is assigned to perform the Services under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing Services under this Agreement.

Contractor will determine on a case-by-case basis whether each individual assigned to perform the Services is qualified to provide the Services. Contractor will not knowingly assign any individual to provide services on The System or Component Institution's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.

Prior to commencing performance of Services under this Agreement, Contractor will provide The System a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will be responsible for providing The System an updated certification letters each time there is a

change in the individuals assigned to perform the Services.

- 4.11 **Records Retention Requirements for Agreements Over One Million.** If the value of this Agreement ever exceeds a total value of one million dollars, and in accordance with Section 552.372 of the [Texas Government Code](#), Contractor agrees to:
- A. preserve all contracting information (as this term is defined in Texas Government Code, Section 552.003 (7)) related to this Agreement in accordance with the records retention requirements applicable to The System for the duration of this Agreement;
 - B. promptly provide to The System any contracting information related to this Agreement that is in the custody or possession of Contractor on request of The System; and
 - C. on completion of this Agreement, either: (1) provide at no cost to The System all contracting information related to this Agreement that is in the custody or possession of Contractor, or (2) preserve the contracting information related to this Agreement in accordance with the records retention requirements applicable to The System.

Contractor further agrees that the requirements of Subchapter J, Chapter 552, [Texas Government Code](#), may apply to this Agreement and the Contractor agrees that the Agreement can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

5. Contractor's Certifications

- 5.1 **Entities that Boycott Israel.** Pursuant to Chapter 2270.002 of the [Texas Government Code](#), Contractor certifies that either (1) it meets an exemption criterion under Section 2270.002; or (2) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Contractor shall state in this Agreement any facts that make it exempt from the boycott certification.
- 5.2 **Foreign Terrorist Organizations.** Pursuant to Chapter 2252.152 of the [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.
- 5.3 **Excluded Parties.** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 5.4 **Suspension and 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 non-procurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Non-procurement 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 The System if, at any time during the Contract Term, 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 The System executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to The System, The System may terminate this Agreement for default by Contractor.

- 5.5 **Eligibility Certifications (Financial Participation Prohibited / Prior Disaster Relief Contract Violation).** Pursuant to Sections 2155.004 and 2155.006, [Texas Government Code](#), Contractor certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if these certifications are inaccurate.
- 5.6 **Human Trafficking.** Under Section 2155.0061 of the [Texas Government Code](#), Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated, and payment withheld if this certification is inaccurate.
- 5.7 **Restricted Employment for Certain State Personnel.** Pursuant to Section 572.069 of the [Texas Government Code](#), Contractor certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for The System involving Contractor within two (2) years after the date that the Agreement is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.
- 5.8 **Child Support Obligation 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.
- 5.9 **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.

- 5.10 **Computer Equipment Recycling Program.** If applicable, Contractor certifies that it is in compliance with Subchapter Y, Chapter 361 of the [Texas Health and Safety Code](#) related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30TAC Chapter 328.
- 5.11 **Firearm Entities and Trade Associations Discrimination.** Pursuant to Chapter 2274 of the [Texas Government Code](#), for Orders that exceed \$100,000 Contractor verifies that it:
- (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
 - (2) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.
- 5.12 **Energy Company Boycotts.** Pursuant to Chapter 2274 of the [Texas Government Code](#), for Agreements that exceed \$100,000, Contractor certifies that it:
- (1) does not boycott energy companies as defined in Section 809.001 (1)(A) Texas Government Code (i.e., fossil fuel companies); and
 - (2) will not boycott energy companies during the term of the Agreement.
- 5.13 **Vaccine Passport Prohibition.** Contractor certifies that it does not require its customers 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 the Contractor's business. Contractor acknowledges that such a vaccine or recovery requirement would make Contractor ineligible for a state-funded contract.
- 5.14 **Critical Infrastructure Affirmation.** Pursuant to Section 2274.0102 of [Texas Government Code](#), Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is:
- (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103 of Texas Government Code, or
 - (2) headquartered in any of those countries.

6. Representations and Warranties by Contractor.

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

- 6.2 **Lobbying Prohibition.** Contractor represents and warrants that The System's payments to Contractor and Contractor's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the [Texas Government Code](#).
- 6.3 **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand The System's Conflicts of Interest Policy and Code of Ethics at <https://www.tsus.edu/about-tsus/policies.html> and applicable state ethics laws and rules. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause The System employees to violate The System's Conflicts of Interest Policy. 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. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause The System employees to violate The System's Conflicts of Interest Policy, The System's Ethics Code, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

Further, Contractor agrees to comply with §2252.908, [Texas Government Code](#) (Disclosure of Interested Parties Statute), and 1 TAC §§46.1 through 46.5 (Disclosure of Interested Parties Regulations), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and The System with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at: <https://www.ethics.state.tx.us/filinginfo/1295/>

- 6.6 In accordance with Section 2252.901 of the [Texas Government Code](#), Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of The System during the twelve (12) month period immediately prior to the date of execution of the Agreement.

7. Ownership and Use of Work Material (Property Rights)

- 7.1 **Work Material.** All tools, software, programs, renderings, drawings, specifications, plans, computations, data, photographs, records, models, statements, reports, studies, and other deliverables or materials prepared or produced by Contractor Parties in connection with the Services (collectively, the Work Material), whether or not accepted or rejected by The System, are the property of The System and for The System's exclusive use and re-use at any time without further compensation and without any restriction. Contractor grants and assigns to The System all rights in and claims to the Work Material and will cooperate with The System in obtaining or enforcing The System's rights and claims. Contractor will not use the Work Material except as expressly authorized by this Agreement.
- 7.2 **Patents or Copyrights.** Contractor will not apply for any copyright, patent or other property right related to the Work Material. Contractor agrees to protect The System from claims involving infringement of patents or copyrights.

- 7.3 Contractor will deliver all Work Material to The System upon expiration or termination of this Agreement. The System will have the right to use Work Material for the completion of Work or otherwise. The System may, at all times, retain the originals of Work Material. Work Material will not be used by any person other than The System on other projects unless expressly authorized by The System in writing.
- 7.4 Work Material will not be used or published by Contractor or any other party unless expressly authorized by The System in writing. Contractor will treat all Work Material as confidential.

8. Right to Audit

- 8.1 **Right to Audit.** Contractor agrees that The System, or any of its duly authorized representatives, at any time during the term of the Agreement, will have access to, and the right to audit and examine, any relevant books, documents, papers, and records of Contractor and related Contractor charges incurred in its performance under this Agreement. Such records will be kept by Contractor for a period of four years after Final Payment under this Agreement. Contractor agrees to refund The System within thirty days of being notified by The System of any overpayments disclosed by any audits.
- 8.2 **State Auditor's Right to Audit.** Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State of Texas Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds. Contractor shall cooperate with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of the Contractor relating to this contract for any purpose.

9. 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 mailed, 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 The System: The Texas State University System

Attention: Vice Chancellor and CFO
601 Colorado Street
Austin, TX 78701

Or via email: finance@tsus.edu

If to Contractor: **INSERT CONTACT INFORMATION**
Attn:
INSERT ADDRESS
INSERT CITY, ST, ZIP

Or via email: **INSERT CONTACT EMAIL**

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

10. Indemnification

CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY THE SYSTEM, AND HOLD HARMLESS THE SYSTEM AND THEIR REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS ORDER, TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF CONTRACTOR, OR IT AGENTS, EMPLOYEES, SUBCONTRACTORS, SUPPLIERS OR ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE FOREGOING SHALL NOT APPLY IF DUE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNITEES. IN ADDITION, CONTRACTOR WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY THE SYSTEM, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS ORDER. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT, WHICH ANY INDEMNITEE HAS, BY LAW OR EQUITY. IN THE EVENT OF LITIGATION, THE SYSTEM AGREES TO COOPERATE REASONABLY WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

11. Limitations

THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF THE SYSTEM (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON THE SYSTEM'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 THE SYSTEM EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

12. Sovereign Immunity

Notwithstanding any provision of the Agreement, nothing herein shall be construed as a waiver by The System of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in the Agreement, the terms of this paragraph shall control.

13. Cybersecurity Training Program

Pursuant to Section 2054.5192, [Texas Government Code](#), Contractor and its subcontractors, officers, and employees, who are provided credentials granting access to The System's computer system also known as The System's information system, must complete a cybersecurity training program certified under Section 2054.519, [Texas Government Code](#) as selected by The System. The cybersecurity training program must be completed during the Initial Term and any renewal period of this Agreement. Contractor shall verify in writing completion of the program to The System within the first thirty (30) calendar days of the Term and any renewal period of this Agreement. Failure to comply with the requirements of this section are grounds for termination for cause of this Agreement.

14. Undocumented Workers / Immigration

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, The System may terminate this Agreement in accordance with **Section 18** 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.

15. **Independent Contractor**

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 The System. Contractor will not bind nor attempt to bind The System 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.

16. **Confidentiality and Safeguarding of System Records; Press Releases; Public Information**

Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of The System, or (3) have access to, records or record systems (collectively, **System Records**). Among other things, System Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws, including student records and protected health information as defined by 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**). Additional mandatory confidentiality and security compliance requirements with respect to System Records subject to the Family Educational Rights and Privacy Act, [20 United States Code \(USC\) §1232g \(FERPA\)](#) are addressed in **Section 19.23**. Contractor represents, warrants, and agrees that it will: (1) hold System Records in strict confidence and will not use or disclose System Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by The System in writing; (2) safeguard System Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security) that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that System Records are safeguarded and the confidentiality of System Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with the TSUS Information Security Policy detailed in Appendix A-3, *The Texas State University System Rules and Regulations* at <https://www.tsus.edu/about-tsus/policies.html>. At the request of The System, Contractor agrees to provide The System within ten (10) calendar days with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of System Records.

16.1 Notice of Impermissible Use. If an impermissible use or disclosure of any System Records occurs, Contractor will provide written notice to The System within one (1) business day after Contractor's discovery of that use or disclosure.

Contractor will promptly provide The System with all information requested by The System regarding the impermissible use or disclosure.

- 16.2 **Return of System Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all System Records created or received from or on behalf of The System will be (1) returned to The System, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any System Records, Contractor will provide The System with written notice of Contractor's intent to destroy System Records. Within five (5) days after destruction, Contractor will confirm to The System in writing the destruction of System Records.
- 16.3 **Disclosure.** If Contractor discloses any System 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.
- 16.4 **Media / Press Releases.** Except when defined as part of Covered Services, Contractor will not make any press releases, public statements, or advertisement referring to the Services or the engagement of Contractor as an independent contractor of The System in connection with the Services or release any information relative to the Services for publication, advertisement or any other purpose without the prior written approval of The System.
- 16.5 **Public Information Act.** The System 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 The System, Contractor will make any information created or exchanged with The System pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by The System that is accessible by the public.
- 16.6 **Termination.** In addition to any other termination rights in this Agreement and any other rights at law or equity, if The System reasonably determines that Contractor has breached any of the restrictions or obligations in this Section, The System may immediately terminate this Agreement without notice or opportunity to cure.
- 16.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

17. Insurance Requirements

Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance in the form, with companies admitted doing business in the State of Texas and having an A.M. Best Rating of A-VII or better, and in amounts (unless otherwise specified), as The System may require:

- 17.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than:

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

Policies must include (a) Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation and other rights in favor of The System.

- 17.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit - \$1,000,000
Damage to Rented Premises - \$300,000
Medical Expenses (any one person) - \$10,000
Personal & Advertising Injury - \$1,000,000
General Aggregate - \$2,000,000
Products - Completed Operations Aggregate - \$2,000,000

Policy will include independent contractor's liability, covering, but not limited to, the liability assumed under the indemnification provision of this contract, fully insuring Contractor's (or Subcontractor's) liability for bodily injury (including death) and property damage.

- 17.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage.

- 17.4 Errors and Omissions Insurance with limits of not less than \$1,000,000 per claim.

- 17.5 If there are potential risks related to data privacy, network or information security associated with the Agreement, Cyber Liability Insurance (with limits of not less than \$10,000,000 for each wrongful act) is required. The policy must cover:

- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of The System's 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.

Contractor will deliver to The System:

17.6 Upon request, evidence satisfactory to The System in its sole discretion, evidencing the existence of all insurance after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to be performed by Contractor under this Agreement.

17.7 Additional evidence, satisfactory to The System in its sole discretion, of the continued existence of all insurance not less than five (5) days prior to the expiration of any insurance. Insurance policies, with the exception of Workers' Compensation and Employer's Liability, shall be endorsed and name The System as an Additional Insured for on-going and completed operations. All policies will be endorsed to provide a waiver of subrogation in favor of The System. All policies with the exception of Workers' Compensation and Employer's Liability will be endorsed to provide primary and non-contributory coverage. Notice of Cancellation shall be provided by the carrier to The System in accordance with policy provisions, however no policy shall be canceled until after thirty (30) days' unconditional written notice to The System. All policies shall be endorsed requiring the insurance carrier providing coverage to send notice to The System 30 days prior to any cancellation, material change, or non-renewal (60 days for non-renewal) relating to any insurance policy required herein.

The insurance policies required in this Agreement will be kept in force for the periods specified below:

17.8 Commercial General Liability Insurance, Business Automobile Liability Insurance; will be kept in force until receipt of Final Payment by The System to Contractor.

17.9 Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until Services have been fully performed and accepted by The System in writing.

17.10 Errors and Omissions Insurance will be kept in force an additional two (2) years after the Services have been fully performed and accepted by The System in writing.

18. Default and Termination

- 18.1 **Termination for Default.** 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 thirty (30) 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 thirty-day (30-day) period.
- 18.2 **Termination for Convenience.** The System may, without cause, terminate this Agreement at any time upon giving thirty (30) days' written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for Services 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 The System. Notwithstanding any provision in this Agreement to the contrary, The System 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.
- 18.3 The System may terminate this Agreement immediately with no further notice if Contractor: (a) petitions for reorganization under the Bankruptcy Code or is adjudged bankrupt; (b) becomes insolvent; or (c) makes a general assignment or sale of Contractor's assets or business for the benefit of creditors.
- 18.4 Termination under this Section does not relieve Contractor or any of its employees, subcontractors or agents from liability for any default or breach under this Agreement or any other act or omission of Contractor.

19. General

- 19.1 **Loss of Funding.** Performance by The System 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 Texas State University System (**Board**). If the Legislature fails to appropriate or allot necessary funds, or the Board fails to allocate necessary funds, then The System will issue written notice to Contractor and The System may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond The System's control.
- 19.2 **Exclusivity.** This Agreement is not exclusive, and The System may engage other vendors or use its own employees to perform Services.
- 19.3 **Governing Law and Venue.** The Agreement and all claims arising from the Agreement shall be interpreted and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Any judicial action or proceeding between the parties relating to the Agreement and all claims arising from the Agreement shall be brought in the federal or state courts serving Travis County in the State of Texas.

- 19.4 **Buy Texas Affirmation.** If Contractor will provide services under the Agreement, Contractor covenants and agrees that in accordance with Section 2155.4441, [Texas Government Code](#), in performing its duties and obligations under the Agreement, Contractor will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
- 19.5 **Force Majeure.** Except as otherwise provided, neither Contractor nor The System, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this agreement caused by Force Majeure, incidents of force majeure will include but are not limited to the following: acts of God, strikes, epidemics and pandemics, war, riots, flood, fire, sabotage, or any other circumstances of like character. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform.
- 19.6 **Assignment and Subcontractors.** Except as specifically provided in **EXHIBIT C**, Subcontracting of Services, 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 The System; 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 The System.
- 19.7 **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.
- 19.8 **Trademark License and Ownership.** Nothing in this Agreement permits Contractor to use The System's logo, trademark, service mark, any Component Institution or The Texas State University System name or likeness and Contractor understands and agrees that such use is strictly prohibited. Additionally, the Contractor is prohibited from referencing The System or Component Institution in any form of marketing or media, including websites, social media and print media. The System may immediately terminate this Agreement in the event of a breach of this provision by the Contractor. This provision shall remain in effect after the termination or expiration of this Agreement.
- 19.9 **Entire Agreement; Modifications.** The Agreement (including all exhibits, schedules, supplements and other attachments (collectively, **Exhibits**)) supersedes all prior agreements, written or oral, between Contractor and The System 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 signed by The System and Contractor.

- 19.10 **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.
- 19.11 **Title and Risk of Loss.** Title to and risk of loss to any goods to be delivered under this Agreement will not pass to The System until The System actually receives and takes possession of such goods at the point of delivery.
- 19.12 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- 19.13 **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.
- 19.14 **Limitation of Liability.** EXCEPT FOR THE SYSTEM'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES THE SYSTEM 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 THE SYSTEM 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 THE SYSTEM, OR THE TEXAS STATE UNIVERSITY SYSTEM, OR ANYONE CLAIMING UNDER THE SYSTEM 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.
- 19.15 **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.
- 19.16 **Dispute Resolution.** To the extent that Chapter 2260, [Texas Government Code](#), is applicable to the 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 The System 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 The System will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Agreement by The System nor any other conduct, action or inaction of any representative of The System relating to the Agreement constitutes or is intended to constitute a waiver of The System's or the state's sovereign immunity to suit; and (ii) The System has not waived its right to seek redress in the courts.

- 19.17 **Enforcement.** Contractor agrees and acknowledges that The System is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing Services. Contractor's services provide a peculiar value to The System. The System 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 The System irreparable injury and damage. Contractor, therefore, expressly agrees that The System 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.
- 19.18 **Office of Inspector General Certification.** Contractor acknowledges that The System is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at The System'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 The System'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 The System's premises or facilities. Contractor acknowledges that The System will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at The System'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/>
- 19.19 **Access to Documents.** To the extent applicable to this Agreement, in accordance with §1861(v)(1)(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.
- 19.20 **Occupational Safety and Health (OSHA) Compliance.** To the extent applicable to the services to be performed under this Agreement, Contractor represents and warrants, that all articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and its regulations in effect or proposed as of the date of this Agreement.

- 19.21 **Nondiscrimination.** In their execution of the Agreement the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of the Agreement.
- 19.22 **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 The System 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 The System 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.
- 19.23 **FERPA Compliance.** Some of the System Records Contractor receives, creates or maintains for or on behalf of The System may constitute **Education Records** (as defined by [FERPA](#)), or **Personally Identifiable Information from Education Records** (as defined by [FERPA](#)) (collectively, **FERPA Records**). Contractor will hold The System FERPA Records in strict confidence. Contractor will not use or disclose FERPA Records received from or on behalf of The System, except as permitted or required by this Agreement in order to execute required Services to The System. 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 The System and that are at least as stringent as the requirements of Title 34, Part 99 – Family Educational Rights and Privacy noted at <https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=34:1.1.1.1.33> to preserve the confidentiality and security of all FERPA Records received from, or on behalf of The System, its students or any third party pursuant to this Agreement. Contractor agrees that no later than thirty (30) days after the expiration or termination of this Agreement, for any reason, or within thirty (30) days after The System's written request, Contractor will halt all access, use, or processing of FERPA Records and will return to The System all FERPA Records, including any copies created by Contractor or any subcontractor; and Contractor will certify in writing to The System that all FERPA records have been returned to The System. 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 this Agreement. 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 this Agreement, including requiring each subcontractor or agent to agree to the same restrictions and obligations in writing.

- 19.24 **No Third-Party Beneficiaries.** Nothing contained in the Agreement, either expressed or implied, is intended to confer on any person other than the Parties, or their respective permitted successors, assigns, transferees or delegates, any interests, rights, remedies, obligations or liabilities pursuant to, or by reason of, this Agreement.
- 19.25 **Use of State Property.** Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the Agreement. Use of State Property for a purpose not authorized by Agreement shall constitute breach of contract and may result in termination of the Agreement and the pursuit of other remedies available to The System under contract, at law, or in equity.
- 19.26 **Group Purchasing Authority.** Texas law authorizes institutions of higher education (defined by Section 61.003, [Texas Education Code](#)) to use the group purchasing procurement method (ref. Section 51.9335 [Texas Education Code](#)). Contractor agrees that other Texas institutions of higher education may enter into a separate agreement or contract with Contractor for the purchase of the services described herein based on the terms, conditions, and process of this Agreement
20. **Access by Individuals with Disabilities.** Contractor represents and warrants (the **EIR Accessibility Warranty**) that the electronic and information resources and all associated information, documentation, and support that it provides to The System under the 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, Rule §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 with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to The System, 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. In the event that Contractor fails or is unable to do so, then The System may terminate the Agreement and Contractor will refund to The System all amounts The System has paid under the Agreement within thirty (30) days after the termination date.

In accordance with [Texas Education Code](#), Section 51.9335 (h), any Contract for the acquisition of goods and services to which an institution of higher education is a party, any provision required by applicable law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:

- (1) Whether the provision appears on the face of the Agreement or Contract; or
- (2) Whether the Agreement or Contract includes any provision to the contrary.

THE FOLLOWING LIST OF EXHIBITS ARE INCORPORATED INTO THE AGREEMENT BY REFERENCE. IN THE CASE OF ANY DISCREPANCIES BETWEEN EXHIBITS AND AGREEMENT, THE AGREEMENT WILL PREVAIL.

EXHIBIT A – Scope of Work

EXHIBIT B – Pricing for Services
EXHIBIT C – Subcontracting of Services
EXHIBIT E – Engagement Letter

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

Insert Contractor Name:

Insert Signor Name
Insert Signor Title

Date

TEXAS STATE UNIVERSITY SYSTEM:

Brian McCall, PhD
Chancellor

Date

Reviewed and Recommended:

Daniel Harper
Vice Chancellor and Chief Financial Officer

Date

Approved as to legal form:

Nelly R. Herrera, J.D.
Vice Chancellor and General Counsel

Date

EXHIBIT A

SCOPE OF WORK

Contractor will provide timely and professional Services as described herein and in accordance with Contractor's response to The System's RFQ #758-22-00074.

This Agreement will take precedence over any additional terms and conditions, including clickthrough terms, associated with any forms, documents or orders (the **Documents**), not directly referenced in this Agreement, related to the provision of Services between Contractor and The System regardless of any language in said Documents.

Project Engagement: No work shall be initiated by Contractor unless specifically authorized by The System in the form of an executed Engagement Letter (ref. **Exhibit E**). Each Engagement Letter will delineate the specific tasks to be accomplished, the estimated period within which the Services will be performed and shall contain a "Not to Exceed" price / amount.

The Services will be provided per the following excerpt from **Section 5** of The System's RFQ 758-22-00074.

Contractor will provide the following Services to The System:

5.6 Contractor will provide construction audit services on a project-by-project basis, as required, and as requested by The System, for Component Institution construction projects. Contractor will assign experienced personnel as needed to provide the Services.

5.7 Audit work will include, but is not limited to:

5.2.7 Reviewing all related documents to identify potential deception and / or fraud.

5.2.8 Confirming compliance with the terms of the Contract Manager at Risk (CMR) and / or Design Build (DB) contracts.

5.2.9 Confirming adherence to the approved schedule and budget of active projects.

5.2.10 Specific items that may be considered for any engagement include, but are not limited to:

- A. prevention of the "ghosting" of payroll,
- B. verification of change order billings in accordance with the Uniform General Conditions,
- C. analysis of leased equipment contracts for non-compliant charges,
- D. review of all subcontracts to verify that values and scopes are in line with the Guaranteed Maximum Price (GMP) proposals,
- E. review for double coverage pertaining to insurance and / or general conditions to the contract,

- F. assistance in the recovery of losses from any subsequent engagement,
- G. review / validation of any claims made against a project,
- H. analysis of RFIs, submittals, Architect's Supplemental Instructions and other associated logs and schedules, and
- I. any other similar activities that would be beneficial to The System to ensure compliance with the applicable agreement.

5.2.11 All work must be performed in accordance with any applicable guidelines and procedures set forth by the State Auditor's Office, and under the general auspices of the TSUS Office of Internal Audit.

5.2.12 Auditor reports prepared under the Agreement will follow distribution processes utilized by the TSUS Office of Internal Audit.

5.8 Project Engagement

5.3.1 To request Services, The System's Contract Manager, or his / her designee, shall notify the designated Point of Contact at Contractor's Firm and identify the specific scope and nature of Services requested.

5.3.2 Contractor and The System will agree upon the specific scope of services required for the project and a not-to-exceed estimate of the fees required based on the project scope. Contractor will provide a written quote, in the form of the project Engagement Letter.

5.3.3 Should the project scope be changed, by mutual written agreement of The System and Contractor, a revised estimate shall be provided to The System for approval followed by the issuance of a revised Engagement Letter.

5.9 Project Deliverables

5.4.5 The deliverables shall be agreed between Contractor and The System but shall include one or more preliminary written audit reports with specific recommendations, and a final written audit report with specific recommendations.

5.4.6 The final report will include The System and / or Component responses to the recommendations.

5.4.7 All reports issued by Contractor will be marked "preliminary" until the issuance of the final report with respect to any project.

5.4.8 Upon completion of Services for each project, Contractor will deliver an electronic copy of the final deliverable to The System.

5.10 Payments to Contractor

5.5.1 Billable Time

- A. Billable time for dedicated hours of work includes, but is not limited to, travel time; communications and meetings with The System, external parties, and between Contractor staff; review of electronic correspondence and attachments; research; analysis; planning; budgeting and other administrative tasks performed to support The System.
- B. Billable time will be tracked by Contractor and rounded to the nearest quarter hour. (Note: Contractor will submit tracking information with invoices as support for payment amounts.)

5.5.2 The maximum fees (including travel expenses) that shall be payable during any contract year (September 1 - August 31) shall be \$200,000. Contractor will provide written notice to The System when and if 80% of this maximum amount has been reached during any contract year.

5.6 Perform additional duties, tasks or services not specifically identified but related to the Services described in this RFQ if needed and when mutually agreed upon in writing by both parties.

[Insert new scope of work to address any additional items Contractor proposes to provide per the submitted qualifications:

Contractor will provide the following additional Services as described in Contractor's RFQ response:

5.X ...Insert specifics from RFQ Response and reference response section in title ...]

EXHIBIT B
PRICING FOR SERVICES

1. Pricing for Services and Expenses

The System will compensate Contractor for successful completion of Services outlined in **Exhibit A**, Scope of Work, as follows.

- 1.1 **Pricing for Services.** Contractor will provide Services at rates(s) described below. Contractor may request an adjustment to the rates (not to exceed 3%) during any renewal to the Contract Term.

Professional Classification / Job Title	Hourly Rate

- 1.2 **Expenses.** In addition to the fee(s) noted above, The System will reimburse, without mark-up, reasonable expenses for travel (including meals, rental car or mileage, coach class airfare, and lodging) validly incurred by Contractor directly and solely in support of Services and approved by The System. Travel will be limited to amounts authorized under The System travel policy. A copy of the travel policy will be provided to Contractor upon request. In the event travel expenses are paid by appropriated funds, travel expenses are limited to amounts authorized by the Comptroller of Public Accounts for the State of Texas for state employees (<https://fmx.cpa.state.tx.us/fm/travel/travelrates.php>). Contractor will not be reimbursed 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, Contractor may be required to submit receipts, invoices, and other documentation requested by The System.

The System reserves the right to pay the then-current per diem rate established under their policy to cover travel expenses in lieu of Contractor submitting receipts and other associated documentation for expenses.

The System reserves the right to negotiate lump sum payments to cover estimated travel expenses in lieu of reimbursing actual travel expenses. In such cases, the payments will be paid to Contractor and reported to Contractor as reportable compensation.

Reimbursement for expenses and disbursements will not exceed a maximum expense cap (ref. **Item 1.4** of this **Exhibit B**) without the prior written approval of The System.

- 1.3 **Intentionally Omitted.**
- 1.4 **Intentionally Omitted.**
- 1.5 **Contract Amount.** The total Contract Amount will not exceed \$*Insert NTE Amount*.

2. Invoicing

Contractor will submit invoices by electronic means, as directed in the associated Engagement Letter, to The System. Each invoice must contain the Agreement Number and supporting documentation for the invoiced amounts as described in **Item 1** of this **Exhibit B**. The System will incur no penalty for late payment, if payment is made in accordance with the Prompt Payment Act. Regardless of the invoice date, the payment process will begin when The System receives the authorization/acceptance from the awarding department.

3. Payment Terms

- 3.1 **Prompt Payment.** So long as Contractor has provided The System with its current and accurate Federal Tax Identification Number in writing and Contractor is not in default under this Agreement, The System will pay Contractor for goods and services in accordance with the Prompt Payment Provisions of Chapter 2251, [Texas Government Code](#). The System will notify Contractor, in writing, of any error or disputed amount in an invoice submitted for payment not later than the 21st day after The System receives the invoice. The System may withhold from payments required no more than 110 percent of the disputed amount.
- 3.2 **Taxes.** The System, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with §151.309, [Texas Tax Code](#), and Title 34 [Texas Administrative Code \(TAC\)](#) §3.322. Pursuant to [34 TAC §3.322\(c\)\(4\)](#), The System is not required to provide a tax exemption certificate to establish its tax exempt status.
- 3.3 **Debts and Delinquencies 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.
- 3.4 **Electronic Funds Transfer.** [Section 51.012, Education Code](#), authorizes The System to make payments through electronic funds transfer methods. Contractor agrees to receive payments from The System through electronic funds transfer methods, including the automated clearing house system (**ACH**). Contractor agrees to provide Contractor's banking information and taxpayer identification number to The System, in the format requested by The System, prior to the first payment. Changes to Contractor's information must be communicated to The System in the same manner at least fourteen (14) days in advance of the effective date of the change.
- 3.5 **Refund.** Contractor will promptly refund or credit within thirty (30) calendar days any funds erroneously paid by The System which are not expressly authorized under the Agreement.

- 3.6 Notwithstanding any provision of this Agreement to the contrary, The System will not be obligated to make any payment to Contractor if Contractor is in default under this Agreement.
- 3.7 No payment made by The System will (a) be construed to be final acceptance or approval of that part of the Services to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.
- 3.8 Notwithstanding any other provision of this Agreement, The System is entitled to a discount of *Insert #* % (**Prompt Payment Discount**) off each payment that The System submits within *Insert #* days after The System's receipt of Contractor's invoice for that payment.

EXHIBIT C**SUBCONTRACTING OF SERVICES****1. Subcontracting**

If at any time during the Term it is determined that Contractor will not self-perform all work associated with the Services, Contractor will complete a Historically Underutilized Business Subcontracting Plan (**HSP**) (ref. **Item 1.3** below) and submit it to The System. Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under the Agreement, in whole or in part. The Agreement is subject to [34 TAC Section 20.285 \(RULE §20.285\)](#) of the [Texas Administrative Code](#). Contractor will comply with all of its duties and obligations under RULE §20.285. In addition to other rights and remedies, The System may exercise all rights and remedies authorized by RULE §20.285.

- 1.1 Contractor agrees to maintain business records documenting its compliance with any HSP and to submit a monthly compliance / progress assessment report (**PAR**) (ref. **Item 1.3** below) to The System in the format required by the Statewide Procurement Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, the **SPD**). Submission of compliance reports will be required as a condition for payment under this Agreement. If The System determines that Contractor has failed to subcontract as set out in the HSP, The System 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 The System determines that Contractor failed to implement the HSP in good faith, The System, in addition to any other remedies, may report nonperformance to the SPD in accordance with 34 TAC [§§20.285\(g\)\(5\)](#), [20.585](#) and [20.586](#). The System may also revoke this Agreement for breach and make a claim against Contractor.
- 1.2 **Changes to the HSP.** If at any time during the Term, Contractor desires to change any HSP associated with this Agreement, before the proposed changes become effective (a) Contractor must comply with [34 TAC §20.285](#); (b) the changes must be reviewed and approved by The System; and (c) if The System approves changes to the HSP, this Agreement must be amended in accordance with this **Exhibit C** to replace the HSP with the revised subcontracting plan.
- 1.3 **SPD Forms.** The current versions of the HSP and PAR forms can be found on the website of the Texas Comptroller: (<https://comptroller.texas.gov/purchasing/vendor/hub/forms.php>)

2. Expansion of Services

If The System expands the scope of Services through a change order or any other amendment, The System will determine if the additional Services contain probable subcontracting opportunities *not* identified in the initial request for Services. If The System determines additional probable subcontracting opportunities exist, Contractor will submit a new or amended subcontracting plan covering those opportunities. The new / amended subcontracting plan must

comply with the provisions of [34 TAC §20.285](#) before (a) this Agreement may be amended to include the additional Services; or (b) Contractor may perform the additional Services. If Contractor subcontracts any of the additional subcontracting opportunities identified by The System without prior authorization and without complying with [34 TAC §20.285](#), Contractor will be deemed to be in breach of this Agreement under **Section 19.6** and will be subject to any remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §20.285](#). The System may report nonperformance under this Agreement to the SPD in accordance with [34 TAC §§20.285\(g\)\(5\), 20.585](#) and [20.586](#).

EXHIBIT D

INFORMATION SECURITY STANDARDS

To the extent of a conflict between a term or condition of this Exhibit and the Agreement, this Exhibit shall govern and control.

Definitions:

Confidential Information: Data that have been designated as private or confidential by law or by The System. Confidential Information includes, but is not limited to, employment records, medical records, student records, education records, personal financial records (or other personally identifiable information), audit logs, research data, trade secrets, and classified government information. Confidential Information shall not include public records that by law must be made available to the general public. To the extent there is any uncertainty as to whether any data constitute Confidential Information, the data in question shall be treated as Confidential Information until a determination is made by The System or proper legal authority.

Authorized Agent of Institution: A Component Institution officer with designated data, security, or signature authority.

1. Data Confidentiality

Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Confidential Information, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action that could result in substantial harm to The System or an individual identified within the data or information in Contractor's custody.

2. Compliance with Laws and Component Institution Policies and Procedures

Contractor shall provide written confirmation within thirty (30) days of contract execution that it has conducted criminal history and credit history background checks on its officers, employees, or other persons it causes to access or handle Component Institution information resources or data. Contractor also agrees to comply with all applicable state and federal laws, regulations, all Component Institution Security and Privacy Policies, the Family Educational Rights and Privacy Act (**FERPA**), Health Insurance Portability and Accountability Act (**HIPAA**), and the Gramm-Leach-Bliley Act (**GLBA**). Contractor shall obtain and maintain all necessary permits, licenses, and certificates required to provide the Services outlined in this Agreement.

3. Information System Security

Contractor agrees, at all times, to maintain commercially reasonable network security that, at a minimum, includes network firewall provisioning, intrusion detection/prevention, and periodic

penetration testing conducted by a qualified third party. Likewise, Contractor agrees to maintain network security that, at minimum, conforms to one of the following:

- 3.1 Current standards set forth and maintained by the National Institute of Standards and Technology, as found at <https://nvd.nist.gov/ncp/repository> ; or
- 3.2 Any generally recognized, comparable standard that Contractor then applies to its own network (e.g., ISO 27002) and which has been approved in writing by The System.
- 3.3 **Confidential Information in Internet Websites and Mobile applications.** If Contractor's service processes confidential information, prior to an Internet website or mobile application being deployed:
 - A. Results or attestation of a vulnerability and penetration test by an independent third party will be provided by the Contractor to The System; and
 - B. The following information must be provided to The System:
 - (1) Architecture of the website or application
 - (2) Authentication mechanism for the website or application
 - (3) Administrator level access to data included in the website or application

4. Data Ownership

The System owns all data processed, stored or transmitted by the Contractor's service in accordance with this Agreement. Such data must only be used for the purpose of this Agreement.

- 4.1 A description of all Institution data to which the Contractor has access must be specified in the contract, and notifications of any changes must be made in writing by the Contractor within 30 days of the change.
- 4.2 A mutually agreed upon data recovery or exit plan must be established at least ninety (90) days prior to the date of future termination of product use (i.e., retrieving stored data from Contractor at the end of this Agreement).

5. Data Security

Contractor agrees to protect and maintain the security of data with measures that include maintaining secure environments that are patched and up-to-date with all appropriate security updates as designated by a relevant authority (e.g., Microsoft notifications). Likewise, Contractor agrees to conform to the following measures to protect and secure data:

- 5.1 **Data Transmission.** Contractor agrees that any and all transmission or exchange of system application data with The System and/or any other parties shall take place using secure, authenticated, and industry-accepted strong encryption mechanisms.

- 5.2 Data Custodianship.** Contractor agrees that any and all of The System's data in the Contractor's custody will be stored, processed, and maintained solely on Contractor information systems as designated in this Agreement. No such data in the Contractor's custody, at any time, will be stored on or transferred to any end-user computing device or any portable storage medium by Contractor or its agents, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes (e.g., backup tapes or drives). All servers, storage, backups, and network paths utilized in the delivery of the Services shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by a Component Institution officer with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by The System's Information Security Officer for any general or specific case.
- 5.3 Data at Rest.** Contractor agrees to store all Component Institution data, including its backup and recovery data, in encrypted form, using sufficiently strong, industry accepted encryption algorithms commensurate with the classification of the information being protected (e.g., AES 128-bit).
- 5.4 Key Management.** Encryption keys must be stored using industry-accepted methods that include storage on information systems separate from the data they decrypt.
- 5.5 Data Re-use.** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the underlying agreement. Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor. As required by Federal law, Contractor further agrees that no Institution data of any kind shall be revealed, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by a Component Institution officer with designated data, security, or signature authority.

6. Compliance

Contractor agrees to provide credible evidence, to the satisfaction of The System, of the following compliance requirements and accepts that failure to do so will prevent The System from purchasing the Services from Contractor.

- 6.1 Security Assessment.** Any Security Assessment questionnaires provided by The System will be answered completely and promptly with all supporting documents submitted to The System.
- 6.2 Accessibility.** Texas Administrative Code (TAC) 213 requires The System to verify that Electronic and Information Resource (EIR) purchases are compliant with Federal 508 Refresh, TAC 206 and TAC 213 laws. The Contractor is required to provide a valid VPAT and a link to a demo of the EIR that can be tested using automated testing tools and assistive technology.

7. End of Agreement Data Handling

Contractor agrees within thirty (30) days of termination of this Agreement or receipt of a written request submitted by an authorized agent of The System, it must:

- A. return all data, including backup and recovery data, to The System in a useable electronic form;
- B. erase, destroy, and render unreadable all Component Institution data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file-restoration utilities; and
- C. certify in writing that these actions have been completed.

8. Data Breach

Contractor agrees to comply with all applicable State of Texas and federal laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), Contractor agrees to:

- A. notify the information security officer (breachnotifications@txstate.edu) and any authorized agents of The System without unreasonable delay and no later than 48 hours after breach discovery;
- B. notifications shall include a full description of all breached data fields and the number of breached records; and
- C. assume responsibility for informing all such individuals in accordance with applicable law.

9. Mandatory Disclosure of Confidential Information

If Contractor becomes compelled by law or regulation (including securities' laws) to disclose any Confidential Information, the Contractor must provide The System written notice without unreasonable delay so that The System may seek an appropriate protective order or other remedy. If a remedy acceptable to The System is not obtained by the date that the Contractor must comply with the request, the Contractor will furnish only that portion of the Confidential Information that it is legally required to furnish, and the Contractor shall require any recipient of the Confidential Information to exercise commercially reasonable efforts to keep the Confidential Information confidential.

10. Remedies for Disclosure of Confidential Information

Contractor and The System acknowledge that unauthorized disclosure or use of the Confidential Information may irreparably damage The System in such a way that adequate

compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Confidential Information shall give The System the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Contractor further grants The System the right, but not the obligation, to enforce these provisions in Contractor's name against any Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.

11. Safekeeping and Security

As part of the Contractor's service, Contractor will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers and similar security codes, identifiers, passwords, or authenticators issued to Contractor's employees, agents, contractors, or subcontractors. Contractor agrees to require its employees to report a lost or stolen device or information within 24-hours of such device or information being lost or stolen.

12. Non-Disclosure

Contractor is permitted to disclose Confidential Information to its employees, authorized contractors and subcontractors, agents, consultants, and auditors on a need-to-know basis only, provided that all such contractors, subcontractors, agents, consultants and auditors have written confidentiality obligation to Contractor.

13. Survival

The confidentiality obligations shall survive termination of any agreement with Contractor for a period of ten (10) years or for so long as the information remains confidential, whichever is longer and will inure to the benefit of The System.

14. Audit Logs

The Contractor's service shall record audit logs (e.g., application-specific user activities, exceptions, information security events such as successful and rejected events, use of privileges, log-on failed-attempts & successes, log-off, data accessed, data attempted to be accessed, administrative configuration changes, and the use of advanced privileges). All logs pertaining to The System's usage of Contractor's service shall be available to The System at all times or it shall be promptly made available, without unreasonable delay, to an authorized agent of The System upon request. These audit logs shall contain sufficient data including but not limited to:

- A. User or process identifiers (e.g., the actor or group if applicable);
- B. Timestamps including time zone;
- C. Source and destination addresses (e.g., IP addresses); and

D. Action or Event descriptions which may include filenames, success or failure indications, and access control or flow control rules invoked.

15. Account Credentials

Any user accounts provisioned inside the Contractor's service for use by The System must be unique and individually assigned. Where applicable, federated authentication services (e.g., SAML, ADFS, or CAS) shall be used. The password management for any non-federated accounts intended for use by The System must comply with The System's password policies unless the Contractor formally requests in writing an exception which must first be approved by The System Information Security Officer.

16. Maintaining Updated Contacts

The Contractor shall provide The System the appropriate contact(s) necessary for The System to maintain the requirements set forth in this Exhibit as well as this Agreement. Any updates to the contact information shall be provided in writing to The System within ten (10) business days.

17. Test / Development Environments

The Contractor will make available to The System a development instance separate from the production instance. This environment shall be made available prior to The System's use of the production instance and this environment shall continue to be made available as long as The System is using the Contractor's service. Component Institution data contained within Contractor test or development environments must be treated as would data in production environments and are subject to the same requirements for safeguards described within this Agreement.

EXHIBIT E

ENGAGEMENT LETTER

This Engagement Letter (**Letter**) for Services between The Texas State University System (**TSUS Administration**), an agency and institution of higher education organized under the laws of the State of Texas, and **[INSERT NAME OF CONTRACTOR]** (**Contractor**) is attached to and incorporated into the previously executed Non-Exclusive Services Agreement # **[INSERT AGREEMENT NUMBER]** (the **Agreement**) between Contractor and **The Texas State University System** effective as of _____, 20XX. This Letter is effective as of the later of _____, 20XX, or the date the Letter is fully executed by both parties (**Effective Date**).

By entering into this Letter, TSUS Administration and Contractor agree to the terms and conditions set forth in the Agreement. All the terms and conditions of the Agreement are incorporated into this Letter for all purposes. Unless otherwise specified in this Letter, all defined terms used in this Letter have the same meaning as assigned to those terms in the Agreement.

While the Agreement is non-exclusive in terms of TSUS Administration's ability to work with other firms, this Letter establishes Contractor as the firm of choice for the particular need described in this Letter. In the event of the termination of this Letter for any reason, any exclusivity created by the Letter is extinguished and TSUS Administration may renew, continue, or begin separate work for Services covered by the Letter and Contractor will have no rights based on the terminated Letter.

Item 1 – Project

Construction audit of **[Name of Construction Project]** at **[Name of Component Institution]**

Project No.: **[Insert Assigned Project Number]**

Project Owner: **[Insert Name]**

Construction Contractor (CMR): **[Insert Name]**

Cost to be Audited: **[Insert Cost]**

Item 2 – Audit Objective & Process

The objective of the audit is to determine that TSUS Administration is being billed in accordance with the terms of the contract with the CMR. The following process will be performed / followed by Contractor to achieve the audit objective:

- A. Kick off Meeting / Conference Call

Upon approval of TSUS Administration, coordinate a meeting with the CMR & Owner representatives to discuss the audit and the process. Items to be discussed include:

- Documentation requested for review & methods of obtaining
- Communications throughout the audit
- Documented log of questions and status
- Draft & Final report process

B. Methodology

- All documentation received from the CMR will be maintained on Contractor's secure FTP site.
- An audit question log will be maintained on an Excel spreadsheet which is used to document questions and responses from the CMR.
- Documentation such as analysis work sheets, document exhibits, etc. to support conclusions will be provided as necessary.
- At the end of the project, the open items on the audit question log will be included in the audit report.
- A draft report is normally reviewed by both the CMR and the Owner.
- Contractor will normally assist in the resolution of any audit issues.
- As items are resolved in the report, the report is updated and finalized when the final pay app is processed.
- The final report is issued.

C. Basic Services Scope of Work to Be Covered During the Audit:

1. Read the construction contract to obtain an understanding of the provisions therein.
2. Meet with the CMR to gain a general understanding of how transactions relative to the Project are processed.
3. Review the CMR's method for computation of any construction cost to be reimbursed requiring prior approval by TSUS Administration and / or the Project Owner, if provided by the construction contract.

D. General Conditions:

1. Determine whether the CMR's charges for labor and labor burden, materials and equipment are in accordance with the terms of the construction contract.
2. Review to ensure that all specified bonds and insurance were purchased by the CMR for the specified amount as stated in the construction contract.

E. Subcontracts:

1. Review bid process for selected subcontracts, review leveling of bids and reconcile to subcontract amount.

2. Obtain from the CMR copies of subcontractor agreements between the CMR and its respective subcontractors.
3. Review of Subcontractor status reports to determine change order activity by subcontractor.
4. For selected subcontractors, obtain from CMR copies of the labor rate (and related labor rate breakdowns) provided to the CMR by the subcontractors. Review the labor rates and burden calculation to determine whether they are in accordance with the construction contract and whether the rates are reasonable in terms of the job scope and comparable market rates.
5. For subcontractors with a significant amount of equipment in their change orders, obtain from the CMR and its subcontractors' copies of their equipment rental rates to determine whether they are in accordance with the provisions of the construction contract.
6. For selected subcontractors, review commodity material prices to determine whether they are in accordance with the provisions of the construction contract and whether the material prices are reasonable in terms of the job scope and comparable market rates.
7. Review the subcontractor's current Schedule of Values and compare to what is billed on the Owner payment application.
8. Review of subcontracts for allowances and back charges.

F. Payment Applications:

1. Review all applications for payment and review the underlying documentation to determine whether amounts are reimbursable and reasonable in accordance with the terms of the construction contract.
2. Review for any job-owned equipment to ensure that appropriate credit is received for all equipment purchased and charged to the job.

G. Use of Contingency Funds and Owner Changes:

1. Review a sample of significant change order requests submitted by the CMR and determine whether amounts are reimbursable in accordance with the terms of the construction contract.
2. Analyze the CMR's accounting for "Allowance" and "Contingency" items and verify that they have been incurred in accordance with the terms of the construction contract.

H. Credits:

1. Select a sample of costs incurred by CMR and determine if there are any credits due from the CMR related to discounts, rebates, sales of surplus material, dividends, and refunds or any nature and determine whether the credits have been properly applied for the benefit of TSUS Administration and / or the Project Owner.
2. Review to ensure that credit is received for any applicable sales of scrap or recyclable material.

I. Final cost reconciliation:

1. Reconcile total project expenditures to ensure discrepancies do not exist between contract billings and the actual payments. Review to ensure that duplicate billings, duplicate payments and / or duplicate scope items are detected in a timely manner.
2. Reconcile the final CMR's Application and Certificate for Payment for selected line items to the CMR's cost reports and Schedule of Construction Costs Incurred to Date as submitted by the CMR.
3. Review of other areas as deemed appropriate, such as Prevailing Wage Rates, etc.

Item 2 – Schedule:

Contractor will commence performance of the Services beginning on [Insert Start Date] and complete the Services no later than [Insert End Date] at which time any exclusive rights of Contractor based on this Letter will be terminated.

Item 3 – Deliverable(s):

Written report(s) summarizing the results of the reviews and conclusions related to the objective of the audit.

Documentation such as analysis work sheets, document exhibits, etc. to support conclusions.

Item 4 – Fees and Reimbursable Expenses:

An itemized pricing schedule specific to this engagement, in addition to the caps noted below, will be provided if requested by TSUS Administration.

Professional Classification / Job Title	Contract Rate	Projected Hours	Total Fee

The Fee Cap for this Engagement is equal to \$ [Insert cap, if any]

The Expense Cap for this Engagement is \$ [Insert cap, if any]

The Not-to-Exceed amount for this Engagement is \$ **[Insert NTE amount]**

Changes in Fee and/or Scope: Increases in the agreed upon fees / expenses may be approved by TSUS Administration in cases where the scope or substantial completion date has significantly changed.

Item 5 – Invoices:

Contractor will submit invoices to TSUS Administration by electronic means to: finance@tsus.edu. Invoices will contain detailed information on billed hours per individual assigned to the engagement for the time period covered under the invoices.

TSUS Administration and Contractor have executed and delivered this Letter to be effective as of the Effective Date.

TEXAS STATE UNIVERSITY SYSTEM

[NAME OF CONTRACTOR]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____