



THE TEXAS
STATE
UNIVERSITY
SYSTEM

REQUEST FOR PROPOSAL

Request for Proposal (“RFP”) No: 758-21-00070

FOR

CLERY COMPLIANCE SERVICES

ALL PROPOSALS MUST BE RECEIVED NO LATER THAN:

Tuesday, January 5, 2021 AT 2:30 PM CENTRAL

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Issue Date: 11/17/20

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APPENDIX ONE: AGREEMENT (See Separate Attachment)

Section 1 – General Information

1.1 OBJECTIVE: The Texas State University System (“**TSUS**” or “**The System**”) is soliciting proposals in response to this Request for Proposal RFP No. 758-21-00070 (this “**RFP**”), from qualified vendors to provide assistance related to compliance with The Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (the “**Services**” or “**Project**”). The System expects to enter into a contract with the selected firm or firms to provide the Services as further described in **Section 5** of this RFP.

This solicitation sets forth, at a minimum, the specifications, terms, conditions, and requirements to be considered for this solicitation. The System will select the proposal(s) that offers the “best value” based on the published selection criteria and on its ranking evaluation of submitted proposals. Firms that respond to this RFP will be referred to as “**Proposers.**”

1.2 DESCRIPTION OF THE SYSTEM: The Texas State University System, founded in 1911, is the first higher education system established in Texas. Beginning as an administrative means to consolidate the support and management of state teacher colleges, TSUS has evolved into a network of higher education institutions stretching from the Texas–Louisiana border to the Big Bend region of West Texas.

TSUS includes a System Administration office and seven (7) component institutions that offer a broad range of academic and career opportunities. Throughout TSUS, faculty and staff are preparing students to work in and contribute to our global society. TSUS and its component institutions (“**Component Institutions**”) are:

- 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

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. The 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: In an effort to evaluate existing policies, practices, and reporting related to campus security, emergency preparedness, and compliance, The System requires comprehensive review and assessment of all Component Institutions’ annual security reports (“**ASRs**”) as required by The Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (“**Clery**”), in-depth, custom-tailored training to numerous campus personnel with Clery responsibilities, and technical assistance on an as-needed basis. The review and assessment must include a comprehensive review of all policies, procedures, protocols and audit trails which form the basis of each of the Component

Institutions' ASR which will be filed by October 1, 2021. The training may be conducted in person at various campus locations or virtually, and the successful Proposer must prepare appropriate training materials, including templates, for use by Component Institution personnel that prepare the annual security reports. The technical assistance will include answering campus-specific questions as they arise.

Component Institutions may require different levels of assistance depending on the state of current policy and procedure.

1.4 CONTRACT TERM: The System intends to enter into an agreement with the selected vendor to perform the Services for an initial two (2) year term with the option to renew for up to three (3) additional one (1) year terms to allow for on-going support. Notice of renewal will be issued in writing approximately thirty (30) days prior to the end of the current performance period.

1.5 SCHEDULE OF EVENTS:

- a. Issue RFP on or about: November 17, 2020
- b. Last Day for questions: December 1, 2020
- c. Proposals due: **January 5, 2021 at 2:30 p.m. (Central Time)**
- d. Anticipated Contract Start Date: Week of April 5, 2020

1.6 CLASS AND ITEM (NIGP) CODES: The related Class and Item code(s) for goods / services requested are: 961-00

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 Proposer under this RFP.

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 RFP could give rise to additional purchase volumes. As a result, in submitting its proposal, Proposer should consider proposing a pricing model and other commercial terms that consider the higher volumes and other expanded opportunities that could result from the eventual inclusion of other IHEs in the purchase contemplated by this RFP. Any purchases made by other IHEs based on this RFP 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 Proposer 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 Proposer by The System, including information from representatives of TSUS or any of its Component Institutions, and information provided to Proposer by members of the public or any other third party shall belong to The System.
- 2.1.4 Information created or otherwise produced by Proposer shall remain the exclusive property of Proposer. Proposer acknowledges any final report or papers will be provided in accordance with this RFP, and that any information contained in any report or papers, which Proposer believes is confidential under Texas law will be clearly designated as such by Proposer.
- 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 Proposer to be confidential, The System will provide notice to Proposer and Proposer 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 RFP:

Jennifer DeLeon

Email: Jennifer.Deleon@tsus.edu

The System instructs interested parties to restrict all contact and questions regarding this RFP to **written** communications with the Point of Contact. Proposers shall restrict all contact with The System and direct all questions regarding this RFP in writing to the Point of Contact.

2.3 PROPOSER QUESTIONS: After the RFP is advertised, Proposers will have until **Tuesday, December 1, 2020** (the “**Question Deadline**”) to submit written questions, including questions regarding terms and conditions or for clarification of the proposal, 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 Proposer's responsibility to continually check the ESBD for Addenda.

2.4 CLARIFICATIONS AND INTERPRETATIONS: Any clarifications or interpretations of this RFP 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 Proposers 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 Proposers to review information and complete responses. All such addenda issued by The System must be acknowledged by Proposers and incorporated into the RFP response (ref. **Section 7**).

2.5 EVALUATION OF PROPOSALS: It is the intent of The System to award a contract to the responsible, responsive Proposer(s) that submits a proposal that meets the minimum criteria set forth herein, and that represents the best value, per 51.9335 (b) Texas Education Code, to The System. All properly submitted proposals will be reviewed, evaluated, and ranked by The System. Proposals will be evaluated by a review panel based on the criteria and relative criteria weights listed below. Only criteria designated in the solicitation can be considered in the award determination.

EVALUATION CRITERIA AND WEIGHTED VALUES (100% maximum):

Best Value Criteria		RFP Specific Criteria	Weight
1	purchase price	Pricing (ref. Section 6)	30%
2	the total long-term cost to the institution of acquiring the vendor's goods or services		
3	the reputation of the vendor and of the vendor's goods or services	Vendor Experience (ref. Section 9.1)	25%
4	the vendor's past relationship with the institution		
5	the quality of the vendor's goods or services	Project Approach (ref. Section 9.2)	45%
6	the extent to which the goods or services meet the institution's needs		
7	any other relevant factor that a private business entity would consider in selecting a vendor		

When considering 'best value' and award, The System reserves the right to set a minimum score requirement regarding the non-cost criteria listed in the table above.

2.6 PRESENTATIONS: The System may, at its sole discretion, invite select responsive firm(s), at the firm(s) expense, to give an oral and/or written presentation and respond to questions. Presentations, at The System's discretion, may be either on site at The System's offices in Austin, Texas or by video conference.

2.7 NEGOTIATIONS: If possible, an award will be made without negotiating. If negotiations are necessary, they will be scheduled after all proposals are evaluated. Negotiations will only be held with Proposer(s) who have a reasonable chance of receiving contract award. Therefore, do not anticipate negotiations being held. Best and Final Offers will only be requested if negotiations are held. Proposer's are strongly encouraged to submit the best offer at the time proposals are due.

2.8 AWARD OF CONTRACT:

2.8.1 A response to this RFP is an offer to contract based upon the best price, terms, conditions and specifications contained herein. Proposals 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.

2.8.2 **Tie Proposals:** Awards will be made in accordance with Rule 1 TAC Section 113.6 (b) and 113.8 (preferences).

2.8.3 **Multiple Awards and Utilization:** It may be determined that having the Services provided by multiple Proposers is more advantageous to The System. The System reserves the right to make multiple awards against this RFP. 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 RFP.

2.8.4 **No Guarantee of Award:** The System makes no warranty or guarantee that an award will be made as a result of this RFP. The System reserves the right to accept or reject any or all proposals, waive any formalities or minor technical inconsistencies and delete any requirement or specification from this RFP 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 Proposer's proposal 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 Proposer within its proposal will be binding on Proposer. The System will not be bound to act by any previous communication or response submitted by Proposer, other than this RFP.

2.9 THE SYSTEM'S RESERVATION OF RIGHTS: The System may evaluate the Proposals 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 proposals and re-solicit for new proposals, or to reject any and all proposals 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 Proposer to this RFP for any project and no such representation is intended or should be construed by the issuance of this RFP.

- 2.10 ACCEPTANCE OF EVALUATION METHODOLOGY:** By submitting its proposal in response to this RFP, Proposer accepts the evaluation process and acknowledges and accepts that the determination of the “best value” firm(s) will require subjective judgments by The System.
- 2.11 NON-REIMBURSEMENT FOR COSTS:** Proposer acknowledges and accepts that any costs incurred from the Respondent’s participation in this RFP process shall be at the sole risk and responsibility of the Respondent. Respondents submit proposals at their own risk and expense.
- 2.12 CONFLICTS/CONTACT:** Respondents shall not contact existing members of the TSUS Board of Regents, The System employees, including those of Component Institutions about this RFP until the resulting contract(s), if any, are fully executed.
- 2.13 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.
- 2.14 TERMINATION/CANCELLATION:** The System may terminate any resulting agreement for any reason, including material changes to selected Proposer’s firm, upon thirty (30) days written notice to the other party.
- 2.15 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 proposal in response to this RFP, Proposer 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 Proposal

3.1 PROPOSAL SUBMITTAL DEADLINE AND LOCATION: The System will receive proposals for this RFP at the time and location described below. The Proposer (not The System, the carrier, mail service/courier, or other party) is solely responsible for ensuring that the proposal 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, January 5, 2021 at 2:30 PM CENTRAL

The Texas State University System
Attn: Jennifer DeLeon / RFP 758-21-00070
601 Colorado Street
Austin, Texas 78701

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

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 proposal. Failure to submit a required HUB Subcontracting Plan form will result in rejection of the proposal.

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

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

3.3 PROPOSAL FORMAT AND REQUIRED COPIES:

3.3.1 **Unacceptable Proposal Delivery Methods:** The System will not accept proposals in response to this RFP that are submitted by telephone, facsimile (fax) transmission, or electronic mail.

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

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

Proposer should submit the complete proposals, 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 Proposal
- D. Pricing and Delivery Schedule (ref. **Section 6**)
- E. Execution of Offer (ref. **Section 7**)
- F. Proposer's Questionnaire (ref. **Section 8**)
- G. Additional Questions Specific to RFP (ref. **Section 9**)
- H. Statement of agreement with terms or redlined agreement (ref. **Section 10**)
- I. Itemized Pricing for Section 6 (ref. **Section 6.1**)
- J. Supplemental Information: Proposer may submit any additional information Proposer feels is relevant to the proposal. This information must be clearly labeled as "Supplemental Information" and in a separate tabbed section of the proposal.

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

- 3.3.4 **Required Copies:** Proposer must submit (a) one (1) complete paper copy of its entire proposal, 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 and be labeled with Proposer's name and the RFP number. An original signature by an authorized officer of Proposer's firm must appear on the Execution of Offer (ref. **Section 7**) included in the submitted proposals, both paper and electronic.

The USB flash drive must contain the following four (4) individual and separate files:

- A. One (1) complete electronic copy of the entire proposal, in a single .pdf file
- B. One (1) electronic copy of the proposal in a single .pdf file that **does not** contain pricing information relative to **Section 6**
- C. One (1) redlined electronic copy of APPENDIX ONE, if applicable, in an editable format (i.e. Microsoft Word)
- D. One (1) electronic copy of the Itemized Pricing for Section 6 in an editable format (i.e. Microsoft Word, Microsoft Excel)

3.5 PRICING: Proposer shall provide all-inclusive pricing as requested in **Section 6** of this RFP. All pricing must be in United States Dollars.

3.6 EXECUTION OF OFFER: Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 7**) as part of the proposal. The Execution of Offer must be signed by an authorized officer of Proposer's firm duly authorized to bind the Proposer to its proposal. Failure to sign and return the Execution of Offer will result in the rejection of the proposal.

3.7 PROPOSER'S QUESTIONNAIRE: Proposer must completely answer all questions asked in **Section 8** (Proposer's Questionnaire). By submitting a proposal, Proposer certifies that, to the best of its knowledge, all responses are true, correct and complete.

3.8 ADDITIONAL QUESTIONS SPECIFIC TO RFP: Proposer must completely answer all questions asked in **Section 9** (Additional Questions Specific to RFP). By submitting a proposal, Proposer certifies that, to the best of its knowledge, all responses are true, correct and complete.

3.9 VALIDITY PERIOD: By submitting a proposal in response to this RFP, Proposer accepts that the proposal will remain valid for a minimum of ninety (90) days after the submittal deadline to allow time for evaluation of proposals, award determination, and any unforeseen delays.

3.10 PREFERRED QUALIFICATIONS: Each Proposal (ref. **Section 9.1.3, 9.1.4** and **9.2.2**) must include information that clearly indicates if Proposer meets the following preferred qualifications:

Proposer and Proposer's team must be nationally recognized subject matter experts and practitioners who are working or have worked in higher education as campus safety administrators and who have provided the same or similar services to other public institutions of higher education for many years. Proposer must also have assisted Institutions of Higher Education ("IHEs") through Department of Education program reviews.

Section 4 – Terms & Conditions of Proposal

The items below apply to and become a part of proposal. Exceptions cannot be taken to the RFP document itself, nor can it be redlined. These actions may result in Proposer's disqualification. Only additions / modifications to **APPENDIX ONE** (ref. **Section 10**) will be subject to consideration by The System.

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

4.1 PROPOSAL REQUIREMENTS AND GENERAL INSTRUCTIONS:

- 4.1.1 **Rules, Regulations & Statutes:** The System is an agency of the State of Texas. Proposers 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 Proposer shall confirm its compliance with all necessary State and/or Federal requirements relative to work performed.
- 4.1.2 **Submittal Deadline Exception:** If The System 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 Proposals:** Late and/or unsigned proposals will not be considered under any circumstances. Person signing the proposal must have the authority to bind Proposer's firm in a contract. The Proposer (not The System, the carrier, mail service/courier, or other party) is solely responsible for ensuring that the complete proposal is received in The Texas State University System's Office 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 **Pricing:** Proposal prices are requested to be firm for The System acceptance for 90 days from proposal opening date (unless otherwise stated in specifications). Proposers must price per unit shown. Unit prices shall govern in the event of extension errors. "Discount from list" proposals are not acceptable unless requested. Cash discounts are not considered in determining an award. Cash discounts will be taken if earned. All costs/pricing must be in United States dollars. The System will not recognize or accept any charges or fees to perform Services that are not specifically stated in the Pricing and Delivery Schedule.
- 4.1.6 **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). Do not include tax in the proposal.
- 4.1.7 **Right to Accept or Reject:** The System reserves the right to accept or reject all or any part of any proposal, waive minor technicalities and award the proposal to best serve the interests of The System and the State of Texas.
- 4.1.8 **Withdrawal:** Any proposal may be withdrawn prior to the date and time set for receipt of proposals. Any proposal not so withdrawn shall constitute an irrevocable offer, for

a period of 90 days, to provide the commodity or service set forth in the specifications, or until a selection has been made by The System.

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

4.2 SPECIFICATIONS:

- 4.2.1 **Brand Name Descriptive:** Catalogs, brand names or manufacturer's references indicate the type and quality required by The System. Proposals on brands of like nature and quality will not be considered unless otherwise stated in the RFP. If proposing other than brand referenced, proposal will show manufacturer, brand or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the proposal.
- 4.2.2 **New Items:** Unless otherwise specified, items shall be new and unused and of current production.
- 4.2.3 **Samples:** Samples, when requested, must be furnished free of expense to the State. Each sample should be marked with the Proposer's name, address, and RFP number. Do not enclose in or attach proposal to sample. All samples become the property of The System.
- 4.2.4 **Oral Statements:** The System will not be bound by any oral statement or representation contrary to the written specifications of the RFP.
- 4.2.5 **Manufacturer's Warranty:** Manufacturer's standard warranty shall apply unless otherwise stated in the RFP.
- 4.2.6 **Warranty-Product:** Proposer shall not limit or exclude any implied warranties and any attempt to do so shall render any potential contract voidable at the option of The System. Proposer warrants that the goods proposed and furnished will conform to the specifications, drawings, and descriptions listed in the RFP, and to the sample(s) furnished by Proposer, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.

4.3 NON-DISCLOSURE: No public disclosures or news releases pertaining to this RFP shall be made without prior written approval of The System.

4.4 CONFLICTS: In event of a conflict between standard proposal requirements and conditions and the attached detailed specification, the detailed specification shall govern.

4.5 PROPOSER AFFIRMATION: Submitting a proposal with a false statement is material breach of contract and shall void the submitted proposal or any resulting contracts, and the Proposer shall be removed from all proposal lists. By submitting a proposal, the Proposer 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 Proposers and persons doing business with The System must provide the highest level of ethics and service in all business interactions. A Proposer 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 a The System employee that might reasonably appear to influence the employee in the discharge of official duties. TSUS may, by written notice to the Proposer, cancel this contract without incurring liability if it determined that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Proposer, or any agent or representative of the Proposer, 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 this contract 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 Proposer in providing such gratuities.
- 4.5.2 If Proposer is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Proposer certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Proposer is exempt from the payment of those taxes, or that Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 4.5.3 Neither the Proposer nor the firm, corporation, partnership, or institution represented by the Proposer, 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 proposal 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 proposal or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the proposal or contract is based. By submitting a proposal in response to this RFP, Proposer certifies and affirms that: 1) Proposer has not received compensation for participation in the preparation of the specifications for this RFP; 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 Proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified payment and acknowledges that any contract resulting from this RFP may be terminated, and payment may be withheld if this certification is inaccurate. Furthermore, any proposer 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 proposal. If awarded this RFP, Proposer 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 Proposer certifies that the individual or business entity named in this proposal is not ineligible to receive the specified contract and acknowledges

that this contract may be terminated and/or payment withheld if this certification is inaccurate.

4.5.7 Proposer 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 Proposer 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, Proposer will submit the following information in response to this Section with their response in order for the proposal to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of separation from State Agency: _____

Position with Proposer: _____

Date of Employment with Proposer: _____

Section 5 – Scope of Work

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

Proposers shall submit a complete response to all requirements and specifications set forth in this RFP. Proposers 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 RFP in response to **Section 8.4.**

Contractor will provide the following Services to The System:

Contractor will conduct comprehensive reviews of the respective annual security and / or fire safety reports for the Component Institutions which will include the review of internal data audits and identification of deficiencies, if any, in such audits and / or reports. Contractor must also provide tools, such as work plans, checklists, and templates that will include policies, procedures, and programming related to all aspects of Clery requirements, including those related to sexual assault, dating and domestic violence, and stalking; and conduct intensive, comprehensive System-wide Clery trainings to both establish an advanced understanding of Clery requirements and address challenges identified during the annual report reviews.

Contractor must interact simultaneously with The System and the staff at the Component Institutions charged with ensuring proper compliance with the requirements of Clery. Contractor will issue a quarterly progress report for each Component Institution to both the campus representative and The System Compliance Officer.

Contractor must be available for meetings (in-person, on-line and / or by phone) at mutually agreed to dates and times for the duration of the project.

A three-phase approach will be used to ensure the Component Institutions are addressing Clery compliance in a pan-institutional and holistic manner. Contractor will independently assess current policies and practices at individual campuses and facilitate the development of system-wide model policies and templates to ensure consistent Clery compliance across The System.

5.1 Phase 1 - Initial Assessment & Compliance Baseline

Contractor will provide a comprehensive review and assessment of Component Institution Programs (policies, procedures, protocols, etc.) related to Clery and Annual Security Reports (“**ASRs**”) as required by Clery. The tasks associated with the review and assessment will include a comprehensive review of all policies, procedures, protocols and audit trails which form the basis of each of the Component Institution ASRs.

5.1.1 Initial ASR Review

Contractor will provide a review and assessment of Component Institution draft ASRs to ensure compliance. Contractor will provide feedback on initial drafts, work with Component Institutions to address any gaps, and review corrections to draft reports prior to the Department of Education's October 1, 2021 deadline.

5.1.2 Program Review

Contractor will provide a detailed assessment ("**Program Review**") of the Component Institution's Clery compliance relative to applicable regulations, reasonable and appropriate standards, practices, and / or benchmarks, and a matrix of comprehensive, feasible, and actionable recommendations.

Contractor must assess and understand Component Institution policies, related processes and practices, and interview key stakeholders. Contractor will conduct data audits to, at a minimum, assess the collection, classifying, and counting procedures for crime statistics and other reported incidents.

Note: If data audits indicate significant error rates, The System may choose to work with Contractor to conduct a multi-year data audit.

At the conclusion of each Program Review, Contractor will provide targeted recommendations for each Component Institution to strengthen existing processes and address any compliance gaps. Contractor's recommendations will:

- A. Identify successes, gaps and challenges of each Component Institution.
- B. Compare local practices and policies against Clery requirements and best practices.
- C. Indicate, and mitigate, areas for improvements to increase compliance and use of best practices where needed.
- D. Facilitate the development of system-wide policies and templates to increase consistency and compliance among Component Institutions.

5.1.3 Final Report

Contractor will be required to prepare a final report that includes the Contractor's findings and specific recommendations for making improvements in Component Institution plans, policies, practices, training and organizational structure related to campus security, emergency preparedness, and compliance with Clery. The report will identify successes, gaps, and challenges in the current processes, and organizational alignment and guide the Component Institutions toward stronger and more effective Clery programs. As part of its findings and recommendations, the Contractor will be expected to include the following items in its final report:

- A. A detailed assessment of each Component Institution's compliance with Clery relative to applicable regulations, reasonable and appropriate standards, practices, and / or benchmarks;
- B. An analysis of the Component Institutions' and The System's programs against regulatory requirements and evolving best practices;
- C. A matrix of comprehensive, feasible, and actionable recommendations (including statistical software recommendations where applicable); and,
- D. A cohesive, comprehensive, feasible, and sequenced implementation plan required to update policies / procedures and to deploy any needed best practices to assist with successful safety and emergency preparedness.

Before submitting its final report, Contractor will be required to meet with the senior leadership of The System, a steering committee, or other relevant groups to present a summary of Contractor's findings and recommendations.

5.2 Phase 2 - Clery Training

Upon completion of Phase 1, Contractor will provide in-depth, custom training sessions to numerous Component Institution personnel that have Clery responsibilities.

5.2.1 Training Topics

The training sessions must provide participants with an advanced understanding of Clery requirements and address challenges identified during the annual report reviews. The training will:

- A. Be conducted at various campus locations and / or provided online;
- B. Provide participants with a detailed understanding of Clery requirements, including any overlap with Title IX;
- C. Review guidance based on Contractor's research into the Department of Education's guidance and requirements;
- D. Provide participants an opportunity to review annual reports for accuracy and completeness;
- E. Provide tools, such as work plans and checklists, to improve compliance, including internal data audits and campus security authority ("**CSA**") identification, notification, and certification; and
- F. Address the complex Violence Against Women Act ("**VAWA**") regulations.

5.2.2 Training Materials

Contractor will provide appropriate training materials, including templates, for use by the personnel responsible for preparing the ASRs at each Component Institution. Materials will include a comprehensive guidebook including references, sample policies and notices, and an annual report template, including identification of applicable policies and protocols, for use by all Component Institutions. The templates must include policies, procedures, and programming related to all aspects of Clery requirements, including those related to sexual assault, dating and domestic violence, and stalking.

5.3 Phase 3 – On-Going ASR Review and Support

A. Annual ASR Review

Contractor will provide a review and assessment of Component Institution ASRs at least 30 days prior to the October 1st submission deadlines each year of the Contract Term. Contractor will review all draft ASRs to ensure compliance and work with applicable Component Institutions, as needed, to address any gaps in reports prior to submission deadlines.

B. On-going Support

Contractor will continue to work with Component Institutions throughout the contract term to ensure Component Institutions remain current with best practices as related to Clery compliance. On-going support includes, but is not limited to:

- Ensuring adoption of model policies by Component Institutions;
- Reviewing forms, templates, and training documents on an annual basis and providing updates as needed;
- Clarifying any changes or updates to Clery as they occur;
- Providing guidance and addressing questions related to compliance with Clery law.

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

Section 6 – Pricing & Delivery

6.1 PRICING FOR WORK AND EXPENSES: Proposer shall include in response to this Section any and all costs associated with the Services (at a firm fixed price) as requested in **Section 5** or any other part of this solicitation. Pricing must be in United States Dollars and is considered *all inclusive*.

Proposer must include an additional sheet (labeled “**Itemized Pricing for Section 6**”) that itemizes the costs included in response to this Section. Only the sub-totals for each Phase and the grand total cost will be included in the table below. The itemized pricing must clearly indicate the associated Phase, dates, key milestones / associated deliverables (ref. **Section 9.2.3**), and cost. The System must be able to clearly identify costs associated with each Component Institution for each of the five (5) potential contract term years.

Indicate fees to be charged to The System for provision of Services:

Phase 1 sub-total	\$
Phase 2 sub-total	\$
Phase 3 sub-total	\$
Grand Total Cost	\$

Note: The System intends to make milestone payments to Contractor based on the completion of milestones / deliverables identified in Proposer’s Itemized Pricing for Section 6 document.

The System will *not* reimburse Contractor for expenses.

6.2 DELIVERY: Indicate number of calendar days needed to commence performance of the Services after contract execution:

_____ Calendar Days

6.3 INVOICING: The System will pay Contractor as milestones are completed and approved by The System’s Contract Manager for the project. Contractor will invoice The System no more than once each month and include any milestones / deliverables that were completed and approved during the prior month. Invoices will be submitted by electronic means and must contain the resulting agreement number and supporting documentation for the invoiced amounts as described in the agreement.

6.4 PAYMENT TERMS: The System’s standard payment terms are “net 30 days” as mandated by the *Texas Prompt Payment Act* (ref. [Chapter 2251, Government Code](#)).

Indicate below the prompt payment discount that Proposer offers:

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

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, Tax Code](#), and [Title 34 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.

Section 7 – Execution of Offer

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

7.1 In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any and all commodities or services at the prices quoted.

7.2 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.

7.3 By executing this offer, offeror affirms 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 proposal lists.

7.4 By the signature hereon affixed, 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. By signing this offer, offeror certifies that if a Texas address is shown as the address of the offeror, offeror qualified as a Texas Resident Proposer as defined in Rule 1 TAC 113.8.

7.5 Acknowledgement of Addenda: The undersigned Proposer 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): _____

Proposer/Company: _____

Signature: _____ Date: _____

Name (typed/printed): _____

Title: _____

Address: _____

Telephone Number: _____ E-mail: _____

Section 8 – Proposer’s Questionnaire

The Proposer recognizes that in selecting a Contractor, The System will rely in part on the answers provided in response to this Section. Accordingly, Proposer certifies that to the best of its knowledge, all responses are true, correct and complete.

All Proposals submitted must contain full and complete responses to each of the following questions about Proposer’s firm (“**Company**”). Proposer must demonstrate the ability to successfully provide the Services. If a Proposer cannot meet any qualifications or responsibilities, it must state that, and when appropriate, offer an alternative response. Failure to respond to any item listed may disqualify the Proposal.

8.1 COMPANY PROFILE:

8.1.1 Legal name of company: _____

Federal Tax ID #: _____

Address of principal place of business: _____

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

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

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

8.1.2 State whether Proposer will provide a copy of Company financial statements for the past two (2) years, if requested by The System.

- 8.1.3 Provide financial rating of Company and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.
- 8.1.4 Provide a brief history of the Company. Indicate the number of years the Company has provided the type of services for which this proposal is submitted.
- 8.1.5 Present evidence that the Company is licensed to solicit business in the State of Texas. Include a copy of the license(s).
- 8.1.6 Identify the organizational status of the Company, i.e., corporation, partnership, or sole proprietorship. Include the date of incorporation, name of corporate president/principals, and federal employment identification number (corporations) or social security number (sole proprietorship).
- 8.1.7 Does any relationship exist by relative, business associate, capital-funding agreement, or any other such kinship between the Company and any employee, officer or Regent of The System, including Component Institutions? If so, please explain.
- 8.1.8 Is the Company 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.
- 8.1.9 Is the Company 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.
- 8.1.10 Provide any details of all past or pending litigation or claims filed against the Company that would negatively impact the Company's performance under any agreement with The System.
- 8.1.11 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.

8.2 QUALITY OF SERVICE:

- 8.2.1 Discuss how Company maintains relationships with clients and provides high-level customer service to clients.
- 8.2.2 Describe the Company's plan to maintain effective communication with The System.
- 8.2.3 Will Company provide a yearly performance review to The System including suggested improvements and future roadmaps? If so, explain.
- 8.2.4 Describe Company's service support philosophy, how it's implemented, and how success in maintaining the philosophy is measured.
- 8.2.5 Describe service approach Company will use and how quality of service will be measured for this project.

- 8.2.6 Describe the training afforded Company employees.
- 8.2.7 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 RFP. Proposer will include samples of reports and documents if appropriate.

8.3 MISCELLANEOUS:

- 8.3.1 Provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to The System. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 8.3.2 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 RFP.
- 8.3.3 Describe, or provide a copy of, Company's contingency plan or disaster recovery plan in the event of a disaster.
- 8.3.4 Describe any difficulties Company anticipates in performing its duties under the Agreement with The System and how Company plans to manage these difficulties. Describe any assistance Company would require from The System.

8.4 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 RFP or that may be of benefit to The System. Any additions, changes or suggestions should be clearly described and defined for The System's consideration. The System reserves the right to incorporate any such additions, changes or suggestions into the Agreement.

Section 9 – Additional Questions Specific to RFP

The Proposer recognizes that in selecting a Contractor, The System will rely in part on the answers provided in response to this Section. Accordingly, Proposer 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 RFP at any time and shall be free from any liability to Proposer for conducting such inquiry. To be considered, Proposer must address and include a response to each question in this Section in their proposal in the order asked and following the same numbering format.

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

9.1 VENDOR EXPERIENCE (25%)

- 9.1.1 Provide references from three (3) of Proposer's customers from the past five (5) years for services that are similar in scope, size, and complexity to the Services described in this RFP.

Provide the following information for each customer:

- Customer name and address;
- Contact name with email address and phone number;
- Time period in which work was performed;
- Short description of work performed.

- 9.1.2 Has Proposer worked with The System or one of the Component Institutions in the past five (5) years? If "yes," state The System contact (or Component Institution name, department name, and department contact) and provide a brief description of work performed.

- 9.1.3 Describe Proposer's specific experience (i.e. with IHEs) in the field of Clery compliance for whom Proposer has done similar work and the dates that work was performed. Include examples of experience with both two-year and four-year institutions.

- 9.1.4 Describe Proposer's unique qualifications as they pertain to this project.

9.2 PROJECT APPROACH (45%)

- 9.2.1 Describe the approach that Proposer will take to complete the Services described in this RFP. How will Proposer work with the participating Component Institutions to meet desired timelines of project? How will Proposer effectively communicate with the various Component Institution employees?

- 9.2.2 Describe the overall staffing approach Proposer will use to complete the Services described in this RFP. Provide information on any team members that will work directly with Component Institutions including:

- a resume;
 - a list of IHEs each person has performed similar work for;
 - the years of experience each person has in this type of work;
 - the role each person will play in the project; and,
 - each person's specific qualifications to perform that role.
- 9.2.3 Provide the schedule Proposer anticipates using to perform the Services described in this RFP. The schedule must be divided into the three (3) phases of the project (ref. **Section 5**) with dates and key milestones included. *Note: These milestones will tie into Proposer's pricing (ref. **Section 6**).
- 9.2.4 Provide a detailed description of how Proposer's firm intends to conduct Program Reviews for the Component Institutions (ref. **Section 5.1.2**). Include examples, methods, timelines, report contents, audit topics, etc. as applicable. Include how reviews will differ for two- year versus four-year institutions.
- 9.2.5 Describe the approach and method Proposer will use to provide training to Component Institution staff (ref. **Section 5.2.1**).
- 9.2.6 Provide examples of reports (e.g. quarterly status reports, final report to The System, etc.) and training materials that will be used to perform the Services.
- 9.2.7 Describe the types of tools (ref. **Section 5.2.1 E**) Proposer has found to be effective in improving Clery compliance. Indicate which of the tools described, if any, Proposer will use in performance of the Services.
- 9.2.8 Describe how Proposer will provide the required on-going support (ref. **Section 5.3 B**) through the term of the contract. Provide details on items including, but not limited to:
- hours available for questions
 - methods of contact
 - any limits to amount of support provided
 - expected response times (average and max)

SECTION 10 – 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 agreement that results from this RFP.

10.1 If Proposer agrees with the terms and conditions set forth in **APPENDIX ONE**, Proposer will acknowledge it in writing (ref. **Section 10.3**)

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

Any additions, deletions, noted exceptions or other change made to the Agreement must be accompanied by a comment explaining Proposer's rationale for the edit.

10.3 Regarding the Agreement (ref. **APPENDIX ONE**) Proposer:

- A. Agrees with the terms and conditions in 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 for consideration by The System in a new Exhibit(s) to the Agreement: Yes: _____ No: _____

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

APPENDIX ONE
AGREEMENT

(SEE SEPARATE ATTACHMENT)

**AGREEMENT BETWEEN
THE TEXAS STATE UNIVERSITY SYSTEM**

AND

CONTRACTOR

This non-exclusive agreement (**Agreement**) is entered into between [REDACTED] (**Contractor**), Federal Tax Identification Number [REDACTED], 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: [REDACTED].

The System and its component institutions (**Component Institutions**) are:

- 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 Proposal (RFP) **#758-21-00070 Clery Compliance Services** and Contractor's response to said RFP. Services will be provided to, and on behalf of, The System and the Component Institutions. 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 April 8, 2021, 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 April 7, 2023 unless earlier terminated in accordance with **Section 18**. The System will have the option to renew this Agreement for three (3) additional one (1) year terms (each a **Renewal Term**). The Initial Term and each Renewal Term are collectively referred to as the **Term**.

Agmt # [REDACTED]

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; Criminal Background Checks.** 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.

Criminal Background Checks. Prior to commencing Services, Contractor will conduct the following background checks on its officers, employees, or other persons it causes to be on The System premises or the campus of any Component Institution:

- Sex offender and criminal history databases where the above individuals will be placed on the campus, working with or around students; and
- Criminal history and credit history background checks where the above individuals will be handling money, informational technology, or other security-sensitive areas as determined by The System.

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 502.003 (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 (i) it meets an exemption criterion under Section 2270.002; or (ii) 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 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 **Television Equipment Recycling Program.** Contractor certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.
- 5.12 **Disclosure of Prior State Employment.** In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by The System or another state agency at any time during the two years preceding the Agreement or, in the alternative, Contractor has disclosed in its Response the following: (i) the nature of the previous employment with System or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

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 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://gato-docs.its.txstate.edu/jcr:34a3f1a1-48af-4b2b-9abb-42921fb9ae23/Rules%20and%20Regulations%20May%202018.pdf> 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/whatsnew/FAQ_Form1295.html.

- 6.4 Contractor represents and warrants that all of Contractor's Personnel contributing to Work Material (ref. **Section 7.1**) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of The System) of Work Material produced by Personnel while performing services pursuant to this Agreement, and (ii) make all assignments necessary to effectuate such ownership. **Personnel** means any and all persons associated with Contractor who provide any work or work product pursuant to this Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors.
- 6.5 Contractor represents and warrants that: (i) Services will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor (for the benefit of The System); (ii) The System will receive free, good and clear title to all Work Material developed under this Agreement; (iii) Work Material and the intellectual property rights protecting Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of Work Material will not violate the rights of any third parties in Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.
- 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.
- 7.5 All title and interest in Work Material will vest in The System and will be deemed to be work made for hire and made in the course of Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in The System or Work Material may not be considered works made for hire, Contractor irrevocably assigns, conveys and transfers to The System and its successors, licensees and assigns, all rights, title and interest worldwide in and to Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against The System, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to The System with the right to sublicense. These rights are assignable by The System.

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 pertinent books, documents, papers, and records of Contractor (such as sales receipts, salary lists, itemized expenses and disbursements, time reports, equipment charges, overtime reports, etc.), and related Contractor 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

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 and this Addendum, 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 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 or Component Institution. Contractor will not bind nor attempt to bind The System or Component Institution 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 Component Institution, 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 or Component Institution Records in strict confidence and will not use or disclose System or Component Institution 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 or Component Institution 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 or Component Institution Records are safeguarded and the confidentiality of System or Component Institution 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://gato-docs.its.txstate.edu/jcr:34a3f1a1-48af-4b2b-9abb-42921fb9ae23/Rules%20and%20Regulations%20May%202018.pdf>. 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 The System or Component Institution Records.

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

System or Component Institution Records. Within five (5) days after destruction, Contractor will confirm to The System or Component Institution in writing the destruction of System or Component Institution Records.

- 16.3 **Disclosure.** If Contractor discloses any System or Component Institution 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 Project or the engagement of Contractor as an independent contractor of The System in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of The System or Component Institution.
- 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 to do 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 University data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
- Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Liability for technological products and services;
- PCI fines, fees, penalties and assessments;
- Cyber extortion payment and response costs;
- First and Third Party Business Interruption Loss resulting from a network security failure;
- Liability for technological products and services;

- Costs of restoring, updating or replacing data; and
- Liability losses connected to network security, privacy, and media liability.

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 Contract and prior to the performance or continued performance of any services to be performed by Contractor under this Contract.
- 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 TSUS 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.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (**force majeure occurrence**). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that The System may continue to provide during the occurrence.
- 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 any System or Component Institution logo, trademark, service mark, the Component Institution and 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 AND COMPONENT INSTITUTION'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 AND COMPONENT INSTITUTION 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 AND COMPONENT INSTITUTION 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 Component Institution may constitute **Education Records** (as defined by [FERPA](#)), or **Personally Identifiable Information from Education Records** (as defined by [FERPA](#)) (collectively, **FERPA Data**). 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 Component Institution. 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 30 days after expiration or termination of the Services to Component Institution, or 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, Education Code) to use the group purchasing procurement method (ref. Section 51.9335 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 D – Itemized Pricing**

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

[CONTRACTOR]:

Name, Title, Authority

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

[Option – Insert signature block if BOR approval is required (over 1M):

ATTEST:

APPROVED by the Board of Regents of the Texas State University System on *Insert Date of BOR meeting*, in *Insert location of BOR meeting*, Texas.

Brian McCall, PhD, Chancellor
Secretary to the Board **I**

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 RFP #758-21-00070.

The Services will be provided per the following excerpt from The System's RFP 758-21-00070:

Contractor will provide the following Services to The System:

Contractor will conduct comprehensive reviews of the respective annual security and / or fire safety reports for the Component Institutions which will include the review of internal data audits and identification of deficiencies, if any, in such audits and / or reports. Contractor must also provide tools, such as work plans, checklists, and templates that will include policies, procedures, and programming related to all aspects of Clery requirements, including those related to sexual assault, dating and domestic violence, and stalking; and conduct intensive, comprehensive System-wide Clery trainings to both establish an advanced understanding of Clery requirements and address challenges identified during the annual report reviews.

Contractor must interact simultaneously with The System and the staff at the Component Institutions charged with ensuring proper compliance with the requirements of Clery. Contractor will issue a quarterly progress report for each Component Institution to both the campus representative and The System Compliance Officer.

Contractor must be available for meetings (in-person, on-line and / or by phone) at mutually agreed to dates and times for the duration of the project.

A three-phase approach will be used to ensure the Component Institutions are addressing Clery compliance in a pan-institutional and holistic manner. Contractor will independently assess current policies and practices at individual campuses and facilitate the development of system-wide model policies and templates to ensure consistent Clery compliance across The System.

5.1 Phase 1 - Initial Assessment & Compliance Baseline

Contractor will provide a comprehensive review and assessment of Component Institution Programs (policies, procedures, protocols, etc.) related to Clery and Annual Security Reports ("ASRs") as required by Clery. The tasks associated with the review and assessment will include a comprehensive review of all policies, procedures, protocols and audit trails which form the basis of each of the Component Institution ASRs.

5.1.1 Initial ASR Review

Contractor will provide a review and assessment of Component Institution draft ASRs to ensure compliance. Contractor will provide feedback on initial drafts, work with Component Institutions to address any gaps, and review corrections to draft reports prior to the Department of Education's October 1, 2021 deadline.

5.1.2 Program Review

Contractor will provide a detailed assessment (“**Program Review**”) of the Component Institution’s Clery compliance relative to applicable regulations, reasonable and appropriate standards, practices, and / or benchmarks, and a matrix of comprehensive, feasible, and actionable recommendations.

Contractor must assess and understand Component Institution policies, related processes and practices, and interview key stakeholders. Contractor will conduct data audits to, at a minimum, assess the collection, classifying, and counting procedures for crime statistics and other reported incidents.

Note: If data audits indicate significant error rates, The System may choose to work with Contractor to conduct a multi-year data audit.

At the conclusion of each Program Review, Contractor will provide targeted recommendations for each Component Institution to strengthen existing processes and address any compliance gaps. Contractor’s recommendations will:

- A. Identify successes, gaps and challenges of each Component Institution.
- B. Compare local practices and policies against Clery requirements and best practices.
- C. Indicate, and mitigate, areas for improvements to increase compliance and use of best practices where needed.
- D. Facilitate the development of system-wide policies and templates to increase consistency and compliance among Component Institutions.

5.1.3 Final Report

Contractor will be required to prepare a final report that includes the Contractor’s findings and specific recommendations for making improvements in Component Institution plans, policies, practices, training and organizational structure related to campus security, emergency preparedness, and compliance with Clery. The report will identify successes, gaps, and challenges in the current processes, and organizational alignment and guide the Component Institutions toward stronger and more effective Clery programs. As part of its findings and recommendations, the Contractor will be expected to include the following items in its final report:

- A. A detailed assessment of each Component Institution’s compliance with Clery relative to applicable regulations, reasonable and appropriate standards, practices, and / or benchmarks;
- B. An analysis of the Component Institutions’ and The System’s programs against regulatory requirements and evolving best practices;

- C. A matrix of comprehensive, feasible, and actionable recommendations (including statistical software recommendations where applicable); and,
- D. A cohesive, comprehensive, feasible, and sequenced implementation plan required to update policies / procedures and to deploy any needed best practices to assist with successful safety and emergency preparedness.

Before submitting its final report, Contractor will be required to meet with the senior leadership of The System, a steering committee, or other relevant groups to present a summary of Contractor's findings and recommendations.

5.2 Phase 2 - Clery Training

Upon completion of Phase 1, Contractor will provide in-depth, custom training sessions to numerous Component Institution personnel that have Clery responsibilities.

5.2.1 Training Topics

The training sessions must provide participants with an advanced understanding of Clery requirements and address challenges identified during the annual report reviews. The training will:

- A. Be conducted at various campus locations and / or provided online;
- B. Provide participants with a detailed understanding of Clery requirements, including any overlap with Title IX;
- C. Review guidance based on Contractor's research into the Department of Education's guidance and requirements;
- D. Provide participants an opportunity to review annual reports for accuracy and completeness;
- E. Provide tools, such as work plans and checklists, to improve compliance, including internal data audits and campus security authority ("**CSA**") identification, notification, and certification; and
- F. Address the complex Violence Against Women Act ("**VAWA**") regulations.

5.2.2 Training Materials

Contractor will provide appropriate training materials, including templates, for use by the personnel responsible for preparing the ASRs at each Component Institution. Materials will include a comprehensive guidebook including references, sample policies and notices, and an annual report template, including identification of applicable policies and protocols, for use by all Component Institutions. The templates must include policies, procedures, and programming related to all aspects of Clery

requirements, including those related to sexual assault, dating and domestic violence, and stalking.

5.3 Phase 3 – On-Going ASR Review and Support

A. Annual ASR Review

Contractor will provide a review and assessment of Component Institution ASRs at least 30 days prior to the October 1st submission deadlines each year of the Contract Term. Contractor will review all draft ASRs to ensure compliance and work with applicable Component Institutions, as needed, to address any gaps in reports prior to submission deadlines.

B. On-going Support

Contractor will continue to work with Component Institutions throughout the contract term to ensure Component Institutions remain current with best practices as related to Clery compliance. On-going support includes, but is not limited to:

- Ensuring adoption of model policies by Component Institutions;
- Reviewing forms, templates, and training documents on an annual basis and providing updates as needed;
- Clarifying any changes or updates to Clery as they occur;
- Providing guidance and addressing questions related to compliance with Clery law.

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

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

5.5 Insert specifics from RFP, including Section 8.4

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 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 to The System in the format required by the Statewide Procurement Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, **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 SPD in accordance with 34 TAC [§§20.285\(q\)\(5\)](#), [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 **Exhibit C, Item 2** to replace the HSP with the revised subcontracting plan.

1.3 **SPD Forms.** The current versions of the HSP and Progress Assessment Report (**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 TPSS in accordance with [34 TAC §§20.285\(g\)\(5\), 20.585](#) and [20.586](#).

EXHIBIT D

ITEMIZED PRICING

(INSERT FINAL INFORMATION HERE)

Addendum No. 1

Issued: 12/10/2020

RFP No.:

758-21-00070

Clery Compliance Services

FOR

THE TEXAS STATE UNIVERSITY SYSTEM
AUSTIN, TEXAS

Notice To All Potential Respondents:

This Addendum to the Request for Proposal (RFP) No. 758-21-00070, posted on 11/17/20, modifies bid documents with the amendments and additions noted below.

Prepared By:

Jennifer DeLeon

The Texas State University System

jennifer.deleon@tsus.edu

I. Extension of Submittal Deadline:

The System office will be closed for the holidays December 19, 2020 – January 3, 2021. To allow extra time for Proposers to send in proposals after the holiday closure, the submittal deadline will be moved to **Friday, January 8, 2021.**

II. Questions and Answers:

The questions below were submitted to the Point-of-Contact in writing prior to the question deadline (ref. **Section 2.3**) in the RFP and have been answered by The System.

1. Section 2.8.3 (Multiple Awards and Utilization) – It states that you may award multiple vendors related to this RFP. Are you willing to accept a proposal from a vendor to provide ONLY phase 2 (the training) related to the scope of work?

Answer: No. Considering the full scope of services, it would not be feasible to have various phases of the work be divided among multiple firms. Though unlikely in this case, The System could make an award to multiple firms (per Section 2.8.3) to provide all of the services.

2. Per Section 2.8.3, if you are willing to accept a proposal for the training only, please advise if one training can be provided either online or in person where all campus personnel with Clery responsibilities can attend from multiple campuses, or will you require 1 training per campus? Basically, is it possible to provide 1 training for everyone at once or will it require 7 trainings? This will influence pricing.
 - When would you like to hold the training(s)? Due to the pandemic, are you open to online training(s) depending on conditions?
 - How many people do you expect to attend the training(s)?

Answer: Not applicable based on the answer to Question #1.

3. Section 2.13 of the RFP (Ownership and use of work materials) & Section 7.2 of Appendix One (Patents or Copyrights) – Our training curriculum is pulled from our national learning objectives. It is not just curriculum development, it's curriculum preparation as we spend time customizing our existing curriculum to meet the needs of your intuition, so we want to be very clear on what you will own if we were to move forward. We can provide a non-exclusive license to use the training and reference materials for their intended purpose by the attendees and their co-workers. Is that sufficient?

Answer: Yes, that would be sufficient with the following stipulations: 1) TSUS staff will need to have full and unlimited access to the training materials after the actual training session takes place. 2) TSUS staff must be able to share the training material with any

other staff members of The System (including the Board of Regents). 3) The System will not sell or share the material with any other institution, system, or organization.

4. Section 3.3 (Proposal format and required copies) – Is an email submission of the RFP acceptable due to the global pandemic influencing mailing systems?

Answer: The System is not currently accepting emailed solicitation submissions.

5. Section 6.1 (Pricing for work and expenses) - It states that the system will not reimburse contractor for expenses. Does this include travel expenses?

Answer: Yes. The System will not be responsible for payment of any costs that are not provided in response to Section 6.

6. On page 7, the RFP states “Sections will be tabbed and clearly labeled for ease of review and evaluation.” This is followed by a list of sections with corresponding letters. Would you like all sections tabbed in accordance with these letters or may we utilize numbers? Also, should the cover page have a tab in front of it or may we begin tabbing with the second section, Table of Contents as Tab A/1?

Answer: Use tabs starting with or after the table of contents. Respondents can determine how to label the tabs (using numbers, letters, or the name of the section - i.e. “Execution of Offer”) but must make sure the table of contents aligns with the tab labels so information in the proposal can be located quickly.

7. On page 8, the RFP states that section H should contain “Statement of Agreement with Terms or Redlined Agreement (ref. **Section 10**).” Should Section H of our proposal contain BOTH a completed copy of Section 10 of the RFP AND a redlined copy of APPENDIX A or may we just place a completed copy of Section 10 in Section H of our proposal and ONLY submit the redlined APPENDIX A as an individual Microsoft Word file on the USB as requested?

Answer: The System would expect that the completed copy of Section 10 would precede a redlined copy of Appendix A (if applicable) behind the same tab of the paper copy of the submitted proposal. Both documents must be included in the single .pdf file copy of the entire proposal (ref. Section 3.3.4, Items A and B). In addition, Proposers will also submit the redlined Appendix A as an individual Microsoft Word file (Ref. Section 3.3.4, Item C).

8. On page 22, the RFP states “Present evidence that the Company is licensed to solicit business in the State of Texas. Include a copy of the license(s).” Will our firm’s annual registration with the Texas Secretary of State satisfy this requirement?

Answer: Yes.

9. Is verified electronic signature acceptable on the Execution of Offer (in place of an ink signature)?

Answer: Yes.

10. In 6.1, the RFP states that the System will not reimburse Contractor for expenses. Does this include travel expenses for team members who conduct in-person training?

Answer: See answer to Question #5.

END OF ADDENDUM 1