ITEMS BELOW APPLY TO AND BECOME A PART OF THE TERMS AND CONDITIONS OF THE SOLICITATION AND ANY SUBSEQUENT AWARD EXCEPTIONS MUST BE MADE IN WRITING

1. VENDOR REQUIREMENTS

1.1 VENDOR must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of TEXAS A&M ENGINEERING EXTENSION SERVICE ("AGENCY").

1.2 Pricing must be quoted on a "per unit" basis, extended as indicated. Any trade discounts included must be itemized and deducted from extended prices. Unit Prices shall govern in the event of extension errors. VENDOR guarantees product or service offered will meet or exceed specifications included as part of this purchase.

1.3 Purchases should be quoted "F.O.B. destination, freight prepaid and allowed" or "Delivered Duty Paid." If quoting freight otherwise, show exact delivery cost and who bears cost if not included in unit price.

1.4 Purchase prices are requested to be firm for a minimum of 30 days after receipt. "Discount from list" purchases are not acceptable unless requested.

1.5 Purchases made for use by AGENCY are exempt from State Sales tax and Federal Excise tax. Do not include tax in bid. Tax Exemption Certificate will be furnished by AGENCY upon request.

2. SPECIFICATIONS.

2.1 All items shall be new and unused, including containers suitable for shipment and storage, unless otherwise indicated by AGENCY. Oral agreements to the contrary will not be recognized.

2.2 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.

2.3 Manufacturer's standard warranty shall apply unless otherwise stated in the purchase.

3. WARRANTIES.

3.1 **Goods**. VENDOR warrants that all goods delivered shall (i) be merchantable; (ii) be free from defects in workmanship, materials, and design; (iii) be fit, safe, and effective for their intended uses and operate as intended; and (iv) be free and clear of all liens, security interests, or other encumbrances. Manufacturer's standard warranty shall apply unless otherwise stated in the purchase.

3.2 **Services**. VENDOR warrants that (i) it will perform services using personnel of requisite skill, experience, and qualifications in a professional and workmanlike manner consistent with industry standards; and (ii) it will devote adequate resources to meet its obligations.

3.3 **Intellectual Property.** VENDOR warrants that the goods and services provided will not infringe or misappropriate any patent, trademark, or copyright or other intellectual property rights of any third party.

3.4 **Remedy**. During the warranty period, VENDOR shall repair or replace a product, or re-perform a service, for no cost to AGENCY if the deliverables fail to conform to these warranties.

4. DELIVERY

4.1 Pricing should show number of days required to place material in receiving agency's designated location under normal conditions. Failure to state delivery time obligates VENDOR to complete delivery in 14 calendar days.

4.2 If delay is foreseen, VENDOR shall give written notice to AGENCY. AGENCY has the right to extend delivery date for valid reasons. Default in promised delivery, without accepted reasons, or failure to meet specifications, authorizes AGENCY to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting VENDOR.

4.3 No substitutions or cancellation permitted without written approval of the AGENCY DEPARTMENT OF PROCUREMENT SERVICES.

4.4 Delivery shall be made during normal working hours only, unless prior approval for late delivery has been obtained from AGENCY.

5. INSPECTION AND TESTS. All goods will be subject to inspection and test by AGENCY to the extent practicable at all times and places. Authorized AGENCY personnel shall have access to VENDOR's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted or on samples taken from regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the specifications, the cost of the sample used, and the cost of the testing shall be borne by VENDOR. Goods which have been delivered and rejected in whole or in part may, at AGENCY's option, be returned to the VENDOR or held for disposition at VENDOR's risk and expense. Latent defects may result in revocation of acceptance.

6. VENDOR AFFIRMATION. Accepting this purchase with a false statement is a material breach of contract and shall void any resulting contracts, and the VENDOR shall be removed from all bid lists. By accepting the purchasing order, the VENDOR hereby certifies that:

6.1 The VENDOR has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the purchase.

6.2 Neither the VENDOR nor the firm, corporation, partnership or institution represented by the VENDOR, 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 Antitrust Laws, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business.

6.3 VENDOR certifies that they are in compliance with section 669.003 of the Government Code, relating to contracting with executive head of State agency. If section 669.003 applies, VENDOR will complete the following information in order for the bid to be evaluated:

Name of Former Executive: _____

Name of State Agency: _____

Date of Separation from State Agency: _____

Position with VENDOR: _____

Date of Employment with VENDOR: _____

7. CONFLICTING TERMS & CONDITIONS. Any conflicting terms and conditions contained within the purchase documents (quote, term sheet, invoice, etc.) are expressly rejected.
WARNING: SUCH TERMS AND CONDITIONS MAY INCLUDE GOVERNING LAWS OTHER THAN TEXAS, REQUIREMENTS FOR PREPAYMENT, LIMITATIONS ON REMEDIES OR LIABILITIES, INDEMNIFICATION, BINDING MEDIATION OR ARBITRATION, ETC.)

8. PAYMENT. All invoices shall be itemized, showing order number and AGENCY purchase order number. AGENCY will make payment on a properly prepared and submitted invoice in accordance with Chapter 2251, Texas Government Code (the "Texas Prompt Payment Act"), which shall govern remittance of payment and remedies for late payment and non-payment. As an agency of the State of Texas, AGENCY is tax exempt.

9. PATENTS OR COPYRIGHTS. Subject to the statutory duties of the Texas Attorney General, the VENDOR agrees to protect AGENCY from claims involving infringement of patents or copyrights.

10. VENDOR ASSIGNMENTS. VENDOR hereby assigns to AGENCY any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq. (1967).

11. EXPORT CONTROL. VENDOR shall comply with U.S. export control regulations. If either Party desires to disclose to the other Party any information, technology, or data that is identified on any U.S. export control list, the disclosing Party shall advise the other Party at or before the time of intended disclosure and may not provide export-controlled information to the other Party without the written consent of the other Party. VENDOR certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

12. SUSTAINABILITY. AGENCY is committed to campus sustainability initiatives. Support of these initiatives includes the purchase of goods and services that minimize the impact on the environment to the greatest extent possible. AGENCY requests VENDOR's assistance in campus sustainability initiatives by informing in any bid response, quote, proposal, or other discussions, of VENDOR's sustainability practices or environmentally sustainable product offerings. For example, alternative products available from VENDOR which may be recyclable or reusable, end of life (obsolescence) return of equipment

to VENDOR, energy-saving devices, return to VENDOR of shipping containers, packaging or like excess materials.

13. BASIC CONTRACTING. VENDOR agrees to the following contracting requirements. All references to "Agreement" shall also mean the Terms and Conditions herein and any Purchase Order issued which includes reference to the Terms and Conditions. AGENCY and VENDOR may be individually referred to as "Party" or collectively referred to as "Parties."

13.1 **Authority to Contract.** Each Party represents and warrants that it has full right, power and authority to enter into and perform its obligations under this Agreement, and that the person signing this Agreement is duly authorized to enter into this Agreement on its behalf.

13.2 **Compliance with Laws.** Each Party shall comply with all federal, state, and local laws, executive orders, rules, and regulations applicable to the performance of its obligations under this Agreement.

13.3 **Confidential Information.**

1. The Parties anticipate that under this Agreement it may be necessary for a Party (the "Disclosing Party") to disclose information of a confidential nature ("Confidential Information") to the other Party (the "Receiving Party"). The Disclosing Party shall clearly identify Confidential Information at the time of disclosure by (i) appropriate stamp or markings on the document exchanged, or (ii) written notice, with attached listings of all material, copies of all documents, and complete summaries of all oral disclosures (under prior assertion of the confidential nature of the same) to which each notice relates, delivered within thirty (30) days of the disclosure to the Receiving Party. Confidential Information shall include all information, data or other content that AGENCY, its affiliates, and their employees, contractors, students, or end-users enter, submit or upload or otherwise provide to VENDOR through use of the VENDOR'S services under this Agreement (collectively, the "Customer Data").
2. "Confidential Information" does not include information that: (i) is or becomes publicly known or available other than as a result of a breach of this Agreement by the Receiving Party; (ii) was already in the possession of the Receiving Party as the result of disclosure by an individual or entity that was not then obligated to keep that information confidential; (iii) the Disclosing Party had disclosed or discloses to an individual or entity without confidentiality restrictions; or (iv) the Receiving Party had developed or develops independently before or after the Disclosing Party discloses equivalent information to the Receiving Party; provided, however, that the above exclusions do not apply to Customer Data that is personally identifiable information or other personal or private data that is protected under applicable laws or regulations.
3. The Receiving Party shall handle Confidential Information with the same care that the Receiving Party uses to protect its own information of comparable sensitivity, but not less than reasonable care. The Receiving Party may use Confidential Information only for purposes of performing its obligations under this Agreement and may disclose Confidential Information only to the Receiving Party's employees, contractors, agents, and other representatives ("Representatives") having a need to know the Confidential Information to fulfill the Receiving Party's obligations under this Agreement; provided that they are subject to confidentiality obligations not less restrictive than those set forth herein, and the Receiving Party remains responsible for its Representatives' compliance with the obligations under this Section.
4. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized disclosure, misappropriation, or misuse of Confidential Information and shall take prompt and effective steps to prevent a recurrence of such misappropriation or misuse.
5. If the Receiving Party is legally required to disclose Confidential Information, the Receiving Party shall, to the extent allowed by law, promptly give the Disclosing Party written notice of the requirement so as to provide the Disclosing Party a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If the Receiving Party complies with the terms of this Section, disclosure of that portion of the Confidential Information, which the Receiving Party is legally required to disclose, will not constitute a breach of this Agreement.
6. The Receiving Party shall, upon request of the Disclosing Party, promptly return or destroy all materials embodying Confidential Information other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, except that the Receiving Party may securely retain one (1) copy in its files solely for record purposes; provided that any such Confidential Information shall remain subject to the confidentiality obligations set forth herein. The Receiving Party's obligations as to Confidential Information will survive the termination or expiration of this Agreement for a period of one (1) year.

13.4 **Customer Data Privacy.**

1. AGENCY shall retain all rights, title, and interest in and to Customer Data. Furthermore, if the Services provided include content generated by artificial intelligence ("AI"), AGENCY shall retain all right, title, and interest in and to the AI generated outputs.
2. VENDOR shall, within two (2) days of discovery, report to AGENCY any use or disclosure of Customer Data not authorized by this Agreement or in writing by AGENCY. VENDOR's report must identify: (a) the nature of the unauthorized use or disclosure, (b) the Customer Data used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure (if known), (d) what VENDOR has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action VENDOR has taken or will take to prevent future similar unauthorized use or disclosure. VENDOR shall provide such other information, including a written report, as reasonably requested by AGENCY.
3. Within thirty (30) days of the expiration or termination of this Agreement, VENDOR, as directed by AGENCY, shall return in acceptable electronic format all Customer Data in its possession (or in the possession of any of its subcontractors or agents) to AGENCY or, at AGENCY's option, delete all such Customer Data, if return is not feasible. VENDOR shall provide AGENCY with at least ten (10) days' written notice of VENDOR's intent to delete such Customer Data and shall confirm such deletion in writing.

13.5 **Entire Agreement.** This Agreement constitutes the entire and only agreement between the Parties relating to the subject matter hereof and supersedes any prior understanding, written or oral agreements between the Parties, or "side deals" which are not described in this Agreement.

13.6 **Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).

13.7 **Indemnification**. Subject to the statutory duties of the Texas Attorney General, VENDOR shall indemnify, defend and hold harmless AGENCY, A&M SYSTEM, and their regents, employees and agents (collectively, the "A&M System Indemnitees") from and against any third-party claims, demands, damages, liabilities, expense or loss asserted against A&M System Indemnities (each, a "Claim") arising out of or related to (i) an allegation that any of the good or services provided by VENDOR under this Agreement infringe upon, misappropriate, or otherwise violate the intellectual property rights of a third party; (ii) VENDOR's breach of any certification, representation, or warranty contained in this Agreement; or (iii) any acts or omissions of VENDOR or its employees or agents pertaining to the activities and obligations under this Agreement, except to the extent such Claim arises from an A&M System Indemnitee's gross negligence or willful misconduct.

13.8 **Independent Contractor.** Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by VENDOR's service to AGENCY. Except as specifically required under the terms of this Agreement, VENDOR (and its representatives, agents, employees and subcontractors) will not represent themselves to be

an agent or representative of AGENCY or A&M SYSTEM. As an independent contractor, VENDOR is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. VENDOR and its employees shall observe and abide by all applicable policies, regulations, rules and procedures of AGENCY and A&M SYSTEM, including those applicable to conduct on its premises.

13.9 **Insurance.** VENDOR shall obtain and maintain, for the duration of this Agreement, the minimum insurance coverage set forth in the Insurance Requirements document that accompanies the purchase order, if any.

13.10 **No Impediments.** VENDOR represents and warrants that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent VENDOR's performance of the Services.

13.11 **Non-Assignment.** VENDOR shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of AGENCY. Any purported assignment in violation of this Section will be void.

13.12 **Non-Infringement.** VENDOR represents and warrants that the Services do not infringe upon or violate any copyright, patent, trademark, or other proprietary or intellectual property rights of any third party.

13.13 **Non-Waiver of Defaults.** The failure of either Party at any time to require performance by the other Party of any provision of this Agreement will in no way affect the right to require such performance at any time thereafter nor will the waiver by either Party of a breach of any provision be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

13.14 **Not Eligible for Rehire.** VENDOR is responsible for ensuring that its employees involved in any work being performed for AGENCY under this Agreement have not been designated as "Not Eligible for Rehire" as defined in A&M System policy 32.02, *Discipline and Dismissal of Employees*, Section 4 ("NEFR Employee"). In the event AGENCY becomes aware that VENDOR has a NEFR Employee involved in any work being performed under this Agreement, AGENCY will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by AGENCY.

13.15 **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed given: (i) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (ii) the next business day after it is sent by overnight carrier, (iii) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (iv) on the date of delivery if delivered personally. AGENCY and VENDOR can change their respective notice address by sending to the other Party a notice of the new address.

13.16 **Organization.** If VENDOR is a business entity, VENDOR 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 this Agreement, and the individual executing this Agreement on behalf of VENDOR has been duly authorized to act for and bind VENDOR. Upon AGENCY's request, VENDOR shall promptly deliver to AGENCY (i) a certificate of good standing certified by the appropriate governmental officer in its jurisdiction of incorporation or organization; and (ii) a certificate of fact issued by the Texas Secretary of State.

13.17 **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.

13.18 **Survival.** Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.

13.19 **Termination.**

1. **Termination For Cause.** In the event of a breach of a material term of this Agreement by a Party, the non-defaulting Party may terminate this Agreement upon thirty (30) days' prior written notice to the other Party detailing the nature of the breach and the other Party fails to fully cure the breach within such 30-day period. AGENCY may immediately terminate this Agreement if (i) the VENDOR's insurance coverage required under this Agreement is cancelled or non-renewed; or (ii) the VENDOR declares bankruptcy, is placed into involuntary bankruptcy or receivership or becomes insolvent.
2. **Termination for Convenience.** AGENCY may terminate this Agreement without cause upon thirty (30) days' prior written notice to VENDOR.
3. **Refund of Deposit/Prepayment.** In the event this PO is canceled and/or terminated by VENDOR for reason not attributable to AGENCY or if canceled and/or terminated by AGENCY for default of performance by VENDOR, then within thirty (30) days after cancellation and/or termination, VENDOR will reimburse AGENCY for all advance payments paid by AGENCY to VENDOR that were (a) not earned by VENDOR prior to cancellation and/or termination, or (b) for goods or services that AGENCY did not receive from VENDOR prior to cancellation and/or termination.

13.20 **Use of Name.** Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading. The Parties will mutually agree in advance upon any public announcements, or communications to the media regarding this Agreement or the services to be provided pursuant to this Agreement.

14. STATE CONTRACTING. VENDOR agrees to the following state contracting requirements. All references to "Agreement" shall also mean the Terms and Conditions herein and any Purchase Order issued which includes reference to the Terms and Conditions. AGENCY and VENDOR may be individually referred to as "Party" or collectively referred to as "Parties."

14.1 **Conflict of Interest.** VENDOR certifies, to the best of their knowledge and belief, that no member of the A&M System's Board of Regents, nor any officer of AGENCY or A&M System, has a direct or indirect financial interest in VENDOR or in the transaction that is the subject of the Agreement.

14.2 **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, Texas Family Code, VENDOR certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

14.3 **Dispute Resolution.** To the extent that Chapter 2260, *Texas Government Code* is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by AGENCY and VENDOR to attempt to resolve any claim for breach of contract made by VENDOR that cannot be resolved in the ordinary course of business. VENDOR shall submit written notice of a claim of breach of contract under this Chapter to the Chief Financial Officer of AGENCY, who shall examine VENDOR's claim and any counterclaim and negotiate with VENDOR in an effort to resolve the claim. This provision and nothing in this Agreement waives AGENCY's sovereign immunity to suit or liability, and AGENCY has not waived its right to seek redress in the courts.

14.4 **Executive Order GA-43.** To the extent that VENDOR is providing goods to AGENCY under this Agreement, VENDOR represents and warrants that the goods are not produced in or exported from the Gaza Strip or from any organization or state actor with ties to Hamas.

14.5 **Executive Order GA-48.** VENDOR represents and warrants that VENDOR is not and, if applicable, none of its holding companies or subsidiaries are (i) listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA") regarding telecommunications and video surveillance; (ii) listed in Section 1260H of the 2021 NDAA regarding Chinese military companies in the US; (iii) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4 ("15 C.F.R. § 791.4 List"); or (iv) controlled by any governing or regulatory body located in a country on the 15 C.F.R. § 791.4 List. VENDOR acknowledges that a false certification is a material breach of contract and is grounds for immediate termination of this Agreement with no further obligation on the part of AGENCY or the A&M System. If this Agreement is terminated due to a false certification, VENDOR will immediately reimburse AGENCY for all prepaid costs.

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

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

14.8 **Hazardous Substance.**

1. VENDOR shall comply with all federal and state environmental laws for the jurisdiction where Services take place.
2. VENDOR shall notify AGENCY in writing of all chemicals, equipment, and supplies supplied, proposed, or used by VENDOR in performance of this PO on AGENCY property that contains hazardous substances or substances for which the law requires a Material Safety Data Sheet("MSDS"). Such notification shall be given upon receipt of this PO by the VENDOR or in all cases prior to arrival of such substances on AGENCY property and shall include, at a minimum, information regarding the hazardous substance including but not limited to MSDS and product labeling as required by Texas Health and Safety Code, Chapter 502. 5.3 The VENDOR shall comply with 6 CFR Part 27, Chemical Facility Anti-Terrorism Standards. Notifications shall be presented to AGENCY when required.

14.9 **Limitations.** As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of AGENCY to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on AGENCY'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"). Terms and conditions related to the Limitations will not be binding on AGENCY except to the extent authorized by the Constitution and the laws of the state of Texas. Neither the execution of this Agreement by AGENCY nor any other conduct, action, or inaction of any representative of AGENCY relating to this Agreement constitutes or is intended to constitute a waiver of AGENCY's or the state's sovereign immunity.

14.10 **Loss of Funding**

1. Performance by AGENCY under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, AGENCY will issue written notice to VENDOR and AGENCY may terminate or cancel this Agreement without further duty or obligation hereunder. VENDOR acknowledges that appropriation of funds is beyond the control of AGENCY. In the event of a termination or cancellation under this Section, AGENCY will not be liable to VENDOR for any damages that are caused or associated with such termination or cancellation.
2. Performance by AGENCY under this Agreement may be contingent upon the appropriation and provision of funds by a federal agency. If the federal agency fails to appropriate or provide the necessary funds, AGENCY will issue written notice to VENDOR and AGENCY may terminate or cancel this Agreement without further duty or obligation hereunder. In the event of a termination or cancellation under this Section, AGENCY will not be liable to VENDOR for any damages that are caused or associated with such termination or cancellation.

14.11 **No Indemnification by Texas A&M.** As an agency of the state of Texas, AGENCY is precluded from agreeing to indemnify another party given constitutional limitations on giving, lending or pledging the state's credit and the doctrine of sovereign immunity. As a governmental entity, AGENCY is immune from suit and liability unless the Texas Legislature consents to the suit. Immunity can only be waived by clear and unambiguous expression of the Texas Legislature. Accordingly, AGENCY has no authority to agree to indemnify VENDOR and waive its sovereign immunity.

14.12 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, VENDOR agrees that any payments owing to VENDOR under this Agreement may be applied directly toward certain debts or delinquencies that VENDOR owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

14.13 **Products and Materials Produced in Texas.** VENDOR agrees that in accordance with Section 2155.4441, Texas Government Code, in performing its duties and obligations under this Agreement, VENDOR will purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

14.14 **Prohibited Agreements.** VENDOR recognizes that as a state agency, AGENCY may not award contracts as outlined below.

1. **Compensation for Preparing Bids.** AGENCY cannot award a contract if such contract includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications for a solicitation on which the bid or contract is based. Under Section 2155.004, Texas Government Code, VENDOR 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.
2. **Disaster Related Contracts.** AGENCY cannot award a contract if such contract involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal, civil, or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina or any other disaster occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, VENDOR 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.
3. **Involvement in Human Trafficking.** AGENCY cannot award a contract if such contract includes financial participation by a person, who, during the five-year period preceding the date of the contract, has been convicted of any offense related to the direct support or promotion of human trafficking. Under Section 2155.0061, Texas Government Code, VENDOR 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.

14.15 **Prohibited Software, Applications, and Developers.** VENDOR certifies that it is not: (a) an entity listed on the Higher Education Research Security Council's list of prohibited software/applications/developers at https://www.highered.texas.gov/prohibited-software-applications-developers/ (the "HERSC List"), or a subsidiary or affiliate of such an entity, or (b) providing, under this Agreement, software that is either on or provided by an entity on the HERSC List. VENDOR acknowledges this Agreement may be terminated for cause immediately if this certification is inaccurate, and VENDOR will refund to AGENCY all amounts prepaid by AGENCY under this Agreement within thirty (30) days following the effective date of termination.

14.16 **Prohibition on Contracts with Companies Boycotting Energy Companies.** To the extent that Chapter 2276, Texas Government Code, is applicable to this Agreement, VENDOR certifies that (i) it does not boycott energy companies, and (ii) it will not boycott energy companies during the term of this Agreement. VENDOR

acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.

14.17 **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Chapter 2271, Texas Government Code, is applicable to this Agreement, VENDOR certifies that (i) it does not currently boycott Israel, and (ii) it will not boycott Israel during the Term of this Agreement. VENDOR acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.

14.18 **Prohibition on Contracts with Companies Discriminating Against Firearm Entities and Trade Associations.** To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, VENDOR certifies that (i) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (ii) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. VENDOR acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.

14.19 **Prohibition on Contracts with Companies Engaging in Business with Certain Countries and Organizations.** VENDOR certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, Texas Government Code. VENDOR acknowledges this Agreement may be terminated for cause immediately if this certification is inaccurate.

14.20 **Public Information.** VENDOR acknowledges that AGENCY is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon AGENCY's written request, VENDOR will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of AGENCY to AGENCY in a non-proprietary format acceptable to AGENCY that is accessible by the public. VENDOR acknowledges that AGENCY may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and VENDOR agrees that this Agreement can be terminated if VENDOR knowingly or intentionally fails to comply with a requirement of that subchapter.

14.21 **Record Retention.** To the extent that Section 552.372, Texas Government Code applies to this Agreement, VENDOR must (i) preserve all "contracting information", as defined under Section 552.003(1-a), Texas Government Code, related to this Agreement for the duration of this Agreement as provided by the A&M System's records retention requirements; (ii) promptly provide to AGENCY any contracting information related to this Agreement that is in the custody or possession of VENDOR on request of AGENCY; and (iii) on completion of this Agreement, either (a) provide at no cost to AGENCY, all contracting information related to this Agreement that is in the custody or possession of VENDOR, or (b) preserve the contracting information related to this Agreement for seven (7) years after the conclusion of this Agreement as provided by the A&M System's records retention requirements. Furthermore, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement, and VENDOR agrees that this Agreement can be terminated if VENDOR knowingly or intentionally fails to comply with a requirement of that subchapter.

14.22 **State Auditor's Office.** VENDOR understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. VENDOR agrees to cooperate with the Auditor in the conduct of the audit or investigation, including, without limitation, providing all records requested. VENDOR will include this provision in all contracts with permitted subcontractors.

14.23 **Venue.** Pursuant to Section 85.18(b), Texas Education Code, mandatory venue for all legal proceedings against AGENCY is to be in the county in which the principal office of AGENCY's governing officer is located.

15. CONDITIONAL OR SITUATIONAL CLAUSES. VENDOR agrees to the following state contracting requirements to the extent applicable. All references to "Agreement" shall also mean the Terms and Conditions herein and any Purchase Order issued which includes reference to the Terms and Conditions. AGENCY and VENDOR may be individually referred to as "Party" or collectively referred to as "Parties."

15.1 **Access by Individuals with Disabilities.** VENDOR represents and warrants that the goods and services provided hereunder comply with the accessibility requirements in Title 1, Chapters 206 and 213 of the Texas Administrative Code and Title II of the Americans with Disabilities Act and the technical standards set forth in the Web Content Accessibility Guidelines 2.1, level AA (available at http://w3.org/TR/WCAG21), as published by the Web Accessibility Initiative of the World Wide Web Consortium (the "Accessibility Warranty"). VENDOR shall promptly respond to and use commercially reasonable efforts to resolve and remediate any noncompliance with the Accessibility Warranty. In the event that VENDOR fails or is unable to do so, AGENCY may immediately terminate this Agreement, and VENDOR will refund to AGENCY all amounts prepaid by AGENCY under this Agreement within thirty (30) days following the effective date of termination.

15.2 **Access to Agency Data.** Pursuant to Section 2054.138, Texas Government Code, VENDOR shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, the security control baseline required by the then-current risk and authorization management program established by the Texas Department of Information Resources ("TX-RAMP") , to safeguard and preserve the confidentiality, integrity, and availability of AGENCY's data (the "Security Controls"). Upon written request by AGENCY, VENDOR shall provide AGENCY with evidence or a copy of the certification of its compliance with the Security Controls within thirty (30) days of such request.

15.3 **Cloud Computing Services.** As of the Purchase Order Date, VENDOR certifies that it complies with the then-current requirements of TX-RAMP. Pursuant to Section 2063.408, Texas Government Code, VENDOR shall maintain TX-RAMP compliance and certification, as may be amended from time to time, throughout the Term, including any renewal term of this Agreement. VENDOR shall provide AGENCY with evidence of its TX-RAMP compliance and certification within thirty (30) days of AGENCY's request and at least thirty (30) days prior to the start of any renewal term of this Agreement. In the event that VENDOR fails to maintain TX-RAMP compliance and certification throughout the Term, including any renewal term, AGENCY may immediately terminate this Agreement, and VENDOR will provide a refund to AGENCY of any prepaid fees.

15.4 **Cybersecurity Training Program.** Pursuant to Section 2063.104, Texas Government Code, VENDOR and its employees, officers, and subcontractors who have access to AGENCY's computer system and/or database must complete a cybersecurity training program certified under Section 2063.104, Texas Government Code, and selected by AGENCY. The cybersecurity training program must be completed by VENDOR employees, officers, and subcontractors during the Term and any renewal period of this Agreement. VENDOR shall verify completion of the program in writing to AGENCY within the first thirty (30) calendar days of the Term and any renewal period of this Agreement. VENDOR acknowledges and agrees that its failure to comply with the requirements of this Section are grounds for AGENCY to terminate this Agreement for cause.

15.5 **Excluded Parties.** Vendor 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.

15.6 **FERPA.** If applicable, for purposes of the Family Educational Rights and Privacy Act ("FERPA"), AGENCY hereby designates VENDOR as a school official with a legitimate educational interest in any education records (as defined in FERPA) that VENDOR is required to create, access, receive, or maintain to fulfill its obligations under this Agreement. VENDOR shall comply with FERPA as to any such education records and is prohibited from redisclosure of the education records except as provided for in this Agreement or otherwise authorized by FERPA or AGENCY in writing. VENDOR is only permitted to use the education records for the purpose of fulfilling its obligations under this Agreement and shall restrict disclosure of the education records solely to those employees, subcontractors or agents who have a need to access the education records for such purpose. VENDOR shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on VENDOR in this Section, including without

limitation, the prohibition on redisclosure. VENDOR shall implement and maintain reasonable administrative, technical, and physical safeguards to secure the education records from unauthorized access, disclosure or use.

15.7 **HIPAA.** The Parties shall comply with all federal and state laws, rules, and regulations applicable to the maintenance, use, and disclosure of Protected Health Information (as defined in HIPAA (as defined below)), including but not limited to, the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder ("HIPAA"), Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder (the "HITECH Act", and collectively with HIPAA, the "HIPAA Requirements"). The Parties agree to enter into any further agreements with each other or other appropriate entities as may be necessary to facilitate compliance with the HIPAA Requirements.

15.8 **Payment Card Industry (PCI) Compliance.** For purposes of this Agreement, "PCI DSS" means the most current version of the Payment Card Industry Data Security Standard administered by the Payment Card Industry Security Standards Council. VENDOR acknowledges and agrees that it is responsible for the security of cardholder data it possesses or otherwise stores, processes or transmits on behalf of AGENCY, or to the extent that VENDOR could impact the security of the cardholder data environment and agrees as follows:

1. VENDOR represents and warrants that, as of the Purchase Order Date, it has complied with all PCI DSS requirements and has performed the necessary steps to validate its compliance with PCI DSS. VENDOR shall maintain such compliance for the Term of this Agreement and send documentation of its most recent validation of compliance to AGENCY annually during the Term of this Agreement. In the event that VENDOR learns that it is no longer PCI DSS compliant, VENDOR will notify AGENCY within two (2) business days of discovery and immediately remediate such non-compliance.
2. VENDOR acknowledges that unauthorized access to the cardholder data environment (a "cardholder data breach") resulting from a lapse in VENDOR's security obligations is grounds for early termination of this Agreement, without penalty and with immediate effect, at AGENCY's discretion. VENDOR agrees to comply with all laws, rules, and regulations applicable to cardholder data services, including without limitation, those laws requiring notification of individuals in the event of a cardholder data breach.
3. VENDOR agrees to indemnify and hold harmless AGENCY from and against any third-party claims, damages, or other harm related to a cardholder data breach. This provision survives termination of this Agreement.

15.9 **Prior Employment.** VENDOR acknowledges that Section 2252.901, Texas Government Code, prohibits AGENCY from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by AGENCY during the twelve (12) month period immediately prior to the effective date of the Agreement. If VENDOR is an individual, by fulfilling this order, VENDOR represents and warrants that it is not a former or retired employee of AGENCY that was employed by AGENCY during the twelve (12) month period immediately prior to the Purchase Order Date.

15.10 **VetHUB Subcontracting Plan.** VENDOR has indicated it will not subcontract any of its duties or obligations under this Agreement. If VENDOR will subcontract any of its duties and obligations under this Agreement, VENDOR will be required to provide prior written notice to AGENCY and make a good faith effort to submit a subcontracting plan, pursuant to the Veteran Heroes United In Business Program (HUB or VetHUB) as required under Section 20.285 of the Texas Administrative Code.