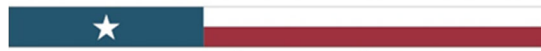


**60x30TX**



Texas Higher Education  
Coordinating Board

**REQUEST FOR APPLICATIONS**

Statewide Preceptorship Program

**2020-2021**

**781-20-22959**

**APPLICATION DEADLINE: 5:00 CST/CDT, March 31, 2020**

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## **1. OVERVIEW OF FUNDING OPPORTUNITY**

### **1.1. PROGRAM TITLE**

Statewide Preceptorship Program (SPP)

### **1.2. SYNOPSIS OF PROGRAM**

The Statewide Preceptorship Program (SPP) provides funding support to preceptorship programs in three primary care specialties: family practice, general internal medicine, and general pediatrics. The programs encourage Texas medical students to choose primary care careers by offering direct student support for a month-long experience in one of the specialties.

This Request for Applications ("RFA") is to support eligible Applicants that intend to facilitate preceptorship experiences for medical school students that allow for early exposure to a primary care medical specialty that may positively influence future career decisions and practice patterns.

### **1.3. PROGRAM AUTHORITY**

Texas Education Code, Section 58.006. Awarded Applicants agree to comply with the laws and rules governing the program.

### **1.4. POINT OF CONTACT**

All inquiries and communications concerning this RFA shall be directed **in writing** via email to:

Melinda Valdez, EdD, Program Director  
Academic Quality and Workforce  
Texas Higher Education Coordinating Board  
Email: MedEd@THECB.state.tx.us  
Phone: 512-427-6115

### **1.5. INQUIRIES**

All inquiries shall be directed to Point of Contact. Applicants and prospective Applicants must not discuss an Application, including a Notice of Intent to Apply, or this RFA with any other THECB employee unless authorized by the Point of Contact. Failure to comply with this requirement may result in the disqualification of an Application. All responses by THECB must be in writing to be binding.

Any information deemed by THECB to be important and of general interest or which modifies requirements of the RFA shall be sent in the form of an Addendum to the RFA to all Applicants that have submitted an Application. All Applicants must acknowledge receipt of all addenda, if any, to this RFA by an email to MedEd@THECB.state.tx.us.

## **2. AWARD SUMMARY**

### **2.1. MAXIMUM NUMBER OF AWARDS ANTICIPATED AND MAXIMUM AWARD AMOUNT ANTICIPATED**

The Statewide Preceptorship Program is funded by the 86th Texas Legislature with a General Revenue appropriation of \$3,000,000, with \$1,500,000 available in Fiscal Year 2020 and \$1,500,000 available in Fiscal Year 2021. The Program will provide grant awards (Award) to eligible and selected Applicants over a grant funding period of approximately two years.

**2.2. GRANT PERIOD**

The Grant Period will begin upon the execution of the Notice of Grant Award (NOGA) and will conclude on August 31, 2021 for a 24-month Grant Period. Awarded Applicants will have contractual obligations that extend beyond the Grant Period.

At the THECB’s sole discretion, the second year of funding is contingent upon the Awarded Applicant using the grant funds according to the grant contract terms and conditions and meeting established benchmarks and deadlines in the first year of the Grant Period.

**2.3. SELECTION FOR FUNDING**

The funding available to support Statewide Preceptorship Program Grants in Fiscal Years (FY) 2020 and 2021 will be awarded to Applicants selected on a competitive basis. Criteria for evaluation and selection of Applications for Awards are described in Section 7.

**2.4. APPLICATION TIMELINE**

The application process for this RFA is anticipated to proceed according to the published application timeline.

<b>Dates</b>	<b>Application Steps</b>
March 31, 2020	Application Deadline
April 2020	THECB Announcement of Grant Awards

**3. ELIGIBILITY REQUIREMENTS**

**3.1. ELIGIBLE APPLICANT –**

Entities in the following categories and located in the state are eligible to apply for a Statewide Preceptorship Program Grant Award:

- (1) qualifies for exemption from federal income tax under Section 501, Internal Revenue Code of 1986 (26 U.S.C. Section 501); or
- (2) is operated by a Medical School, as defined in RFA Definitions, Attachment A.

**3.2. ELIGIBLE PROJECTS**

Applications submitted under this RFA must intend to facilitate preceptorship experiences for medical school students that allow for early exposure to a primary care medical specialty that may positively influence future career decisions and practice patterns.

**3.3. PRIORITY PROJECTS**

Disregard - omitted for this RFA.

**3.4. MAXIMUM NUMBER OF APPLICATIONS PER APPLICANT**

An Eligible Applicant may submit a maximum of one (1) Application.

**3.5. NOTICE OF INTENT TO APPLY**

Disregard – omitted for this RFA. A Notice of Intent to Apply (NOI) is not required for this RFA.

## 4. APPLICATION SUBMISSION

### 4.1. APPLICATION DEADLINE: 5:00 p.m. CDT/CT, March 31, 2020

Applications must be:

- completed according to the guidelines in Section 8
- submitted by an authorized agent of the Applicant entity
- submitted via email to [MedEd@THECB.state.tx.us](mailto:MedEd@THECB.state.tx.us) to the Point of Contact listed in Section 1.4.

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*Late or incomplete Applications will not be accepted. Applications submitted to an address different from [MedEd@thecb.state.tx.us](mailto:MedEd@thecb.state.tx.us) will **not** be accepted.*

*THECB will not accept mailed, hand-delivered, or faxed Applications.*

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Submission of an Application confers no rights of Applicant to an award or to a subsequent Contract if there is one. The issuance of this RFA does not guarantee that a Contract will ever be awarded. The THECB reserves the right to amend the terms and provisions of the RFA, negotiate with Applicant, add, delete, or modify the Contract and/or the terms of Application submitted, extend the deadline for submission of Application, or withdraw the RFA entirely for any reason solely at the THECB's discretion. An individual Application may be rejected if it fails to meet any requirement of this RFA. The THECB may seek clarification and additional documentation from Applicant at any time, and failure to respond within a reasonable timeframe is cause for rejection of an Application.

### 4.2. THECB CONFIRMATION OF APPLICATION RECEIPT

The THECB shall not be responsible for Applications that are captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by THECB or Applicant antivirus or other security software.

The THECB will confirm Application receipt via email within **three (3)** state business days of receipt by THECB. If an Applicant does not receive such confirmation from the THECB, contact the Point of Contact listed in Section 1.4 immediately. Applicant will be required to provide proof of timely submission of the Application.

### 4.3. COST OF APPLICATION PREPARATION

All costs associated with the preparation and submission of an Application for this RFA are the responsibility of Applicant. These costs shall not be chargeable to the THECB by any successful or unsuccessful Applicant.

### 4.4. APPLICATION DELIVERY AND LATE APPLICATIONS

Applications must be submitted by an authorized agent of the Applicant.

Applications shall be considered to be "on time" if they are received on or before the date and time of established deadlines. Applicant shall be solely responsible for ensuring that Application is received by the THECB prior to the deadlines outlined in Section 4.1. The THECB shall not be responsible for failure of electrical or mechanical equipment, operator error, or inability of an electronic delivery agent to deliver an Application prior to the deadline.

Failure to respond in a timely manner to this RFA shall result in Applicant losing the opportunity to receive a Grant under this program. A late Application, regardless of circumstances, shall not be evaluated or considered for award.

## 5. PROGRAM BACKGROUND

### 5.1. DETAILED PROGRAM OVERVIEW

In 2019, the 86th Texas Legislature appropriated \$3 million to support student preparation and education efforts at the medical school level. The programs provide support to Texas medical students to encourage them to choose primary care careers by offering an on-site experience in one of three primary care specialties: family medicine, general internal medicine, or general pediatrics. The guiding premise of the preceptorship experience is that early exposure in a primary care medical specialty may positively influence future career decisions and practice patterns. Medical students typically participate in the preceptorship programs during the summer between their first and second year of medical school. The students work in practicing physicians' offices and experience the daily life and work of primary care physicians.

## 6. PROJECT REQUIREMENTS

### 6.1. FUNDING RESTRICTION

SPP funds shall not be substituted for any other funds available to the Applicant or any program or project partners. Awarded funds shall be spent only on expenses that support the SPP as documented in the Applicant's Budget and Timeline.

### 6.2. ALLOWABLE COSTS AND PROHIBITED COSTS

#### 6.2.1. Allowable Cost Categories.

Reasonable costs in the budget categories below are allowable:

**Personnel Compensation** - salaries, wages, and benefits of personnel, including, but not limited to the following positions: *Example: project director, coordinator, and administrative support.*

**Student Stipends** – not less than 40 percent of total annual budget.

**Travel** - Travel expenses are allowed for personnel conducting activities directly related to the grant project. These costs must be specifically identified and justified in the Application Budget, the Final Award Budget, or a budget subsequently approved by THECB via a Budget Change Request. Travel expenses must be consistent with state of Texas guidelines relating to type (transportation, lodging, meals), funding basis (actual cost, per diem, mileage), and reasonableness.

**Equipment, Maintenance, Operations, and Supplies.**

**Other Direct Costs** -- Approval of expenditures for Other Direct Costs is at the discretion of THECB. These costs must be specifically identified and justified in the Application budget and the negotiated award budget.

#### 6.2.2. Prohibited Costs.

The following types of costs shall not be included in the proposed budget or be paid with SPP Grant funds:

- Costs incurred prior to the Grant Period, requires prior written approval by the THECB.



- Salaries or other stipends that are calculated at a higher pay rate than that which an individual normally receives in a position (or in a similar position).
- Warranties, protection plans, and service contracts beyond the standard coverage period that is included in the purchase price.
- Food and beverages not considered as per diem for travel.
- Alcohol.
- Travel not consistent with state of Texas guidelines relating to type (transportation, lodging, meals), funding basis (as actual cost, per diem, mileage), and reasonableness.
- Foreign travel.
- Indirect costs.

### **6.2.3. Budget Changes**

Over the life of the grant, no more than a total of 10 percent of the total award may be transferred across the allowable budget categories listed in Subsection 6.2.1 without prior written THECB staff approval. The Awarded Applicant may not charge any of the following costs to the grant without prior written approval from the THECB:

- Equipment, software, licenses, or subscriptions not specifically itemized in the awarded Application.
- Domestic travel not specifically itemized in the awarded Application Budget or the Final Award Budget.
- Salaries and fringe benefits for faculty and staff needing release time other than those specifically identified in the awarded Application.
- Other Direct Costs not specifically identified and justified in the Application Budget or the Final Award Budget.

Budget Change Request approval must be received in writing by the Point of Contact for SPP.

## **7. AWARD SELECTION CRITERIA**

Each Applicant shall satisfy Section 3, Eligibility Requirements to be considered during the award selection process. Applicants shall be selected for funding on a competitive basis.

This RFA is designed to issue Grant Awards that provide the best overall value to the state within the SPP. Selection criteria shall be based on eligibility requirements, funding priorities, and other factors, including past performance on THECB grants.

### **7.1. APPLICATION SCREENING**

THECB staff shall conduct an initial screening of Applications to determine if they adhere to the Grant program requirements contained in the RFA. An Application must meet RFA requirements and be submitted with proper authorization on or before the day specified by the THECB to qualify for further consideration.

All incomplete, ineligible, or otherwise non-compliant applications will not be considered for funding. It is anticipated that THECB staff will notify Applicants eliminated through the screening process within 7 working days of the submission deadline.

Each Application that passes the initial screening for completeness and eligibility will be further considered for award selection according to the funding priority categories and general selection criteria described in Section 7.3.

**7.2. PRIORITY CRITERIA FOR AWARD SELECTION**

Disregard – omitted for this RFA.

**7.3. GENERAL CRITERIA FOR AWARD SELECTION**

THECB staff will review the Applications based on the program elements and the review criteria presented in this section, which are designed to assess the quality of a proposed project and determine the likelihood of its success.

The program uses awarded funds to pay the costs of maintaining a centralized preceptorship coordinating office and to provide funds to medical students upon completion of their preceptorship. The centralized preceptorship coordinating office:

1. Clearly documents the number of medical school students projected to participate in each year of the Grant Period.
2. Matches and coordinates preceptorships in its medical specialty for all eligible Texas medical students, including allopathic and osteopathic medical students, from all Texas medical schools as defined in Section 61.501(1), Texas Education Code, with eligible preceptors in its medical specialty statewide.
3. Coordinates the preceptorship program timeline for application opening and submission deadline with other statewide preceptorship programs in primary care medical specialties.
4. Develops and maintains a faculty roster to serve as preceptors, provides faculty development for physicians who serve as preceptors, and provides basic guidelines for the preceptorship curriculum with the input of representatives from all Medical Schools, as defined in RFA Definitions, Attachment A.
5. Maximizes use of award funds to support medical students participating in, and only for activities related to, the preceptorship program.
6. Provides participating medical students funds upon the completion of a four-week maximum preceptorship experience according to the following schedule:

a. Urban area:	\$3,000.00
b. Rural, health professional shortage area, or medically underserved area:	\$5,000.00

The medical student stipend may be prorated for a rotation having a duration shorter than four weeks. The four-week maximum preceptorship experience may be divided into non-consecutive weeks.

7. Has a process to verify that students complete the rotation and are paid in a timely fashion.
8. Has a plan to actively seek local and other support funds for the program and shall use these funds to supplement state funds allocated to the program.
9. Has a plan to track number of program preceptor matches, including data from participating medical schools, the number of participating medical students, intended specialty training of

preceptorship participants, and the number of participating preceptors.

10. Has a plan to track the intended choice of graduate medical education specialty by preceptorship program participants after their graduation from Medical school.
11. Collaborates and coordinates with local communities to publicize participation of local-area students.

#### **7.4. RECOMMENDATION FOR FUNDING**

THECB staff shall make a recommendation of selected Applicants to be funded to the Commissioner of Higher Education, who will submit his funding decision to THECB Board members for their final approval as consistent with THECB Rule 1.16.

### **8. APPLICATION FORMAT AND CONTENT**

An Application must include the elements described in Subsections 8.1 through 8.7 of this RFA. The Application Form is available on the THECB website: [www.thecb.state.tx.us/SPP](http://www.thecb.state.tx.us/SPP).

In completing the Application, applicants should provide sufficient information to allow reviewers to clearly evaluate the Application based on the selection criteria described in Section 7.3 of this RFA.

#### **8.1. CERTIFICATION OF APPLICATION INFORMATION**

The Certification Page provides a signature by an authorized representative to certify the accuracy and completeness of information submitted in the Application. The signatory must be an individual who is legally authorized to bind the Applicant. Completion and submission of the Application Certification Page provided by the THECB fulfills this requirement.

#### **8.2. PROJECT NARRATIVE**

##### **8.2.1 Contact Information**

Provide Applicant contact information. Provide Partner contact information (if applicable). Provide location information on the proposed program/project.

##### **8.2.2 Project Summary**

The summary must identify the Project Goal Statement (see Section 8.3.1) and provide a brief description of the overall project plan. Applicant must provide the following:

- (a) A clear description of the preceptorship program, including its organization, partners, and project objectives
- (b) Information on preceptorships, including curriculum and length. Describe the circumstances under which the program would allow a preceptorship rotation of less than four weeks in length
- (c) A description of program promotion and student recruitment activities for the program; and
- (d) A description of how the program addresses the Selection Criteria in Section 7.3.

### **8.2.3 Description of Applicant and Partners**

Provide information on Applicant and Partners (if applicable) expected to participate in the program/project, including expected detailed information on their roles and contributions. Clearly describe participants' level of commitment to the project, including percent of work allocated to project, if applicable. Include information about any third party or partner involvement. Provide clear explanation of relationship between Applicant and Partner, include whether the Applicant would delegate authority or responsibilities (if applicable).

### **8.2.4 Assessment of Need**

Briefly describe Need.

## **8.3. PROJECT WORK PLAN AND TIMELINE**

Program Activity Timeline should include the major objectives and activities that support the operation of the program over the Grant Period, the target/completion date, and the responsible individual. Describe the budget items of the program in sufficient detail so that a reviewer can determine the appropriateness and rationale for the proposed costs. The budget items should be consistent with the goals of the program listed in this RFA. Please note the Timeline should be submitted as a separate attachment to the Application (Section 8.8).

Project Work Plan is satisfied with information provided in Section 8.2.2.

### **8.3.1 Project Goal Statement**

The Project Goal Statement shall identify the ultimate outcome of the project. It should include objectives that are specific and measurable.

### **8.3.2 Major Project Objectives and Expected Outcomes**

Major Project Objectives and Expected Outcomes is satisfied with information provided in Section 8.2.2/8.3.1.

## **8.4. PROJECT EVALUATION**

Project evaluation should provide outcomes of the key performance measures for identified project objectives and describe the evaluation methodology. Awarded Applicants must document status of expected outcomes during required project reporting. After the end of the funding period, Awarded Applicants must report on the final outcome of each identified project objective. Section 10 provides detail on grant reporting requirements.

The THECB may conduct an evaluation to assess the statewide effectiveness of the program/project.

## **8.5. BUDGET**

Applicant must complete the budget in Microsoft Excel file format. The budget must include:

- A reasonable estimate of SPP funds expenditures over the Grant Period
- Amounts and justification of allowable funds expenditures by category and year (Refer to Section 6.2)

THECB shall negotiate a Final Award Budget with each Awarded Applicant.

## **8.6. FINANCIAL VIABILITY**

Disregard – omitted for this RFA.

## **8.7. EVIDENCE OF LEADERSHIP COMMITMENT**

Disregard – omitted for this RFA.

## **8.8. ATTACHMENTS**

Provide a FY 2020 – FY 2021 Timeline (see Section 8.3) and provide Prior Year Program Outcomes information specified in (a) – (e) below for FY 2018 - FY 2019 as a separate attachment to the Application.

If Applicant did not operate a statewide preceptorship program in FY 2018 – FY 2019, provide the specified information for the most recent fiscal year Applicant operated such a program.

- (a) The total number of volunteer preceptor faculty available to students, and requirements for faculty participation;
- (b) The number of program preceptor matches, the number of participating medical students, and the number of participating preceptors;
- (c) Student participation by medical school and historical student participation by medical school;
- (d) Student and preceptor participation by preceptor location and type of location (rural or urban); and
- (e) The intended specialty training of preceptorship participants as reported upon completion of an SPP experience.
- (f) The amount of unexpended funds returned to the THECB.

Examples of other acceptable attachments include evidence of programmatic accreditation, letters of support, external review assessments.

## **9. DISTRIBUTION OF AWARD FUNDS**

### **9.1 ISSUANCE OF GRANT AWARD**

Following all negotiations between the THECB and Applicants and the announcement of awards, the Awarded Applicants will receive an electronic copy of the THECB's Notice of Grant Award (NOGA, Appendix B), which will take effect on the day the NOGA is fully executed. Throughout this RFA, the terms "NOGA," "Award," "Contract", and "Grant" are used interchangeably.

The Contract must be executed by an individual authorized to enter into a contract on behalf of the Applicant. Upon execution of a Contract resulting from this RFA, the term "Applicant" shall have the same meaning as "Awarded Applicant" or "Grantee." The Texas Higher Education Coordinating Board, a state agency, may also be referred to as the "THECB," "Board," or "Agency." At times, THECB or "Board" and Contractor are referred to singularly as "Party" and collectively as "Parties." Likewise, the terms "Request for Applications" and "Application" shall have the same meaning as the term "Contract" or "Agreement."

### **9.2 "DISCLOSURE OF INTERESTED PARTIES" REQUIREMENT**

The THECB may not execute a contract/grant requiring approval of the Board Chair, Vice Chair, and Committee Chair until the non-state Business Entity has presented a certificate disclosing interested parties. For-profit organizations, not-for-profit organizations, and private institutions selected for an award must complete this requirement before a grant award contract can be executed. Further information relating to Disclosure of Interested Parties is provided in Section 11.25 of this RFA.

### **9.3 FUNDS DISBURSEMENT AND PAYMENT TERMS**

Subsequent to full NOGA execution and THECB receipt of the Disclosure of Interested Parties as applicable, Grant Award funds will be disbursed according to the following provisions of this RFA.

AGP Grants are funded through state general appropriations. Awarded Applicant shall receive two payments through the Texas Comptroller of Public Accounts. The THECB shall not disburse awarded funds until the NOGA has been fully executed and, if applicable, the Disclosure of Interested Parties has been received and acknowledged by the THECB, as described in Section 9.2. OR until submitted expenditure reports have been approved by the THECB for payment.

At the THECB's sole discretion, the second year of grant funding is contingent upon the Awarded Applicant using grant funds appropriately, meeting project benchmarks, and producing expected outcomes in the first year of the Grant Period. A completed Request for Funds form is also required. The THECB will provide the required form.

All grant-related expenses must be incurred on or prior to August 31, 2021. Any grant funds received by Grantee and not expended prior to the end of the Grant Period shall be returned to THECB within ninety (90) days, unless otherwise agreed by THECB and Grantee.

### **9.4 LAST DAY OF EXPENDITURES**

All allowable grant-related expenses must be incurred on or before August 31, 2021. Expenses incurred after this date cannot be charged to SPP.

### **9.5 RETURN OF UNEXPENDED FUNDS**

Awarded Applicants shall return any unexpended funds to THECB by November 30, 2021, or within a ninety (90) day-period after the end of the Grant Period days unless otherwise agreed by THECB and Grantee. This will allow for inclusion of any unexpended funds in the Final Financial Report that is due on or before October 30, 2021.

Awarded Applicant shall return any remaining funds promptly, if Award is terminated.

### **9.6 GRANT EXTENSION**

Grant Extensions are not permitted under this RFA.

## **10. MONITORING AND REPORTING REQUIREMENTS**

### **10.1. MONITORING**

The THECB staff shall monitor and oversee SPP progress and compliance through required reporting to ensure that grant commitments are fulfilled and that the financial matters related to the grant award are accurate and appropriate. Awarded Applicant shall be required to complete the program and financial reports listed in Sections 10.2 and 10.3 for a program funded as a result of this RFA.

If Awarded Applicant does not submit the required reports detailed in Sections 10.2 and 10.3 by the established deadline, and the Awarded Applicant has not been granted a submission extension, the THECB reserves the right to require that unexpended funds be returned. Delinquent and unaccepted reports may affect Awarded Applicant's eligibility to apply for future THECB grant awards.

### **10.2. PROJECT/PROGRAM NARRATIVE REPORTS**

Awarded Applicant shall submit three written program reports as specified by the THECB on or before the following dates:

1. Interim Program Report due September 21, 2020

2. Interim Program Report due March 15, 2021
3. Final Program Report due September 20, 2021

Program Reports will generally include, but may not be limited to:

- (a) The number of program preceptor matches, the number of participating medical students, and the number of participating preceptors;
- (b) Student participation by medical school in the preceding fiscal year;
- (c) Historical student participation by medical school;
- (d) Student and preceptor participation by preceptor location;
- (e) The intended specialty training of preceptorship participants; and
- (f) A description of efforts to secure local and other support for the program, including information on in-kind grants of supplies, time, and property allocated to the program.

### **10.3. FINANCIAL REPORTS**

The Financial Reports must:

1. Detail actual expenditures during the grant funding term by budget cost category and amount; and
2. Include a statement certifying expenditures and unexpended balance signed by the authorized representative of Awarded Applicant.

Awarded Applicant shall submit financial expenditure reports as specified by the THECB due on or before the following dates:

1. Interim Expenditure Report due October 19, 2020
2. Interim Expenditure Report due April 19, 2021 (must include the anticipated amount of unexpended funds that will be returned to the THECB at the end of the Grant Period), and
3. Final Financial Report due October 30, 2021 (must confirm the amount of any unexpended fund that were returned to the THECB at the end of the Grant Period).

## **11. TERMS AND CONDITIONS**

### **11.1 TERMINATION**

Notwithstanding the termination or expiration of this Contract, the provisions of this Contract regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, provision of services, and default shall survive the termination or expiration dates of this Contract.

#### **11.1.1 Convenience of the State**

THECB, in its sole discretion, may terminate this Grant Award/Agreement upon one (1) calendar day's written notice to Grantee. Such notice will be provided in accordance with Section 11.36, Notice, of this Grant Award/Agreement. In the event of such termination, the Grantee shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. THECB will be liable only for payments for any deliverables received from or services performed by the Grantee before the termination date.

#### **11.1.2 Termination for Cause**

THECB may, by written notice to Grantee, immediately terminate this Grant Award/Agreement for cause if: (a) THECB is not reasonably satisfied with Grantee's Services; (b) default or abandonment by Grantee occurs; or (c) Grantee fails to comply fully with any term or condition of this Grant Award/Agreement, through no material fault of THECB. If THECB deems it appropriate under the circumstances, THECB will provide a three (3) business day advance written notice of intent to terminate to Grantee, and THECB will provide Grantee with an opportunity for consultation with THECB prior to termination during that three (3) business day period.

If Grantee fails or refuses to perform its obligations under this Grant Award/Agreement, THECB may exercise any and all rights as may be available to it by law or in equity. In the event THECB exercises its right to terminate for cause, Grantee is responsible for paying damages to THECB including but not limited to re-procurement costs (if applicable), and any other consequential damages to the State of Texas and THECB resulting from Grantee's non-performance.

### **11.1.3 Abandonment or Default**

If the Grantee Abandons or Defaults on the Grant Award/Agreement, THECB reserves the right to terminate the Grant Award/Agreement without notice and either re-solicit or re-award the Grant Award/Agreement to the next best responsive and responsible Grant Applicant. The defaulting Grantee will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by THECB based on the seriousness of the default.

### **11.1.4 Applicable Law and Conforming Amendments**

THECB may terminate this Grant Award/Agreement immediately upon notice to Grantee in the event federal or state law is enacted, amended, or judicially interpreted so as to render continued fulfillment of the Grant Award/Agreement, on the part of THECB, wholly unreasonable or impossible. THECB reserves the right, at its sole discretion, to unilaterally amend this Grant Award/Agreement throughout the Grant Award/Agreement Term to incorporate any modifications necessary for THECB's compliance, as an agency of the State of Texas, with all applicable state and federal laws, rules, regulations, requirements, and guidelines.

### **11.1.5 Excess Obligations (Non-Appropriation)**

The Grant Award/Agreement is subject to termination or cancellation, without penalty to THECB, either in whole or in part, subject to the availability of state funds.

### **11.1.6 Effect of Termination**

Upon any termination, all indemnities, including without limitation those set forth in this Grant Award/Agreement, as well as Grant Award/Agreement provisions regarding confidentiality, records retention, right to audit, ownership, and dispute resolution, shall survive the termination of this Grant Award/Agreement for any reason whatsoever and shall remain in full force and effect. In the event of any termination, Grantee shall, unless otherwise mutually agreed upon in writing, cease all Services immediately upon the effective date of termination, except such Services that THECB deems are necessary to wind-up in a cost-effective manner.



For any termination by THECB other than termination for non-appropriation, THECB shall be liable to Grantee for only that portion of the Services authorized by THECB and which have been completed prior to the effective date of termination, provided that THECB shall not be liable for any work performed that is not acceptable to THECB and/or does not meet Grant Award/Agreement requirements, plus any necessary work deemed appropriate by THECB to cost-effectively wind-up.

#### **11.1.7 Transfer of Duties**

In the event of termination, Grantee will provide reasonable cooperation to transfer its duties under the Grant Award/Agreement to another entity without disruption, if applicable.

### **11.2 AMENDMENT**

This Grant Award/Agreement may be modified only by written amendment executed by the Parties hereto; however, any amendment of this Grant Award/Agreement that conflicts with the laws of the State of Texas shall be void ab initio.

### **11.3 INDEMNIFICATION**

#### **(THIS SECTION DOES NOT APPLY TO STATE AGENCIES)**

Acts or Omissions: GRANTEE SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THECB AND THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF THE GRANTEE OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN EXECUTION OR PERFORMANCE OF THE GRANT AWARD/AGREEMENT AND ANY PURCHASE ORDERS ISSUED UNDER THE GRANT AWARD/AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY GRANTEE WITH THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS IF THECB AND/OR THE STATE OF TEXAS AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND DESIGNEES ARE A NAMED DEFENDANT IN ANY LAWSUIT AND THE GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. GRANTEE AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

### **11.4 SOVEREIGN IMMUNITY**

The Parties stipulate and agree that no provision of, or any part of this Grant Award/Agreement between THECB and Grantee, or any subsequent amendment shall be construed: (1) as a waiver of the doctrine of sovereign immunity or immunity from suit as provided for in the Texas Constitution and the Laws of the State of Texas; (2) to extend liability to THECB beyond such liability provided for in the Texas Constitution and the Laws of the State of Texas; or (3) as a waiver of any immunity provided by the 11th Amendment or any other provision of the United States Constitution or any immunity recognized by the Courts and the laws of the State of Texas and the United States. The State of Texas and THECB do not waive sovereign immunity by entering into this Grant Award/Agreement and specifically retain such immunity and all defenses available to them under the laws of the State of Texas or the common law.

### **11.5 ASSIGNMENT**

Grantee shall not assign its rights under the contract or delegate the performance of its duties under the Grant Award/Agreement without prior written approval from the THECB. Any attempted assignment in violation of this provision is void and without effect.

### **11.6 DELEGATION OR SUBCONTRACTING**

Unless as otherwise provided for in this Grant Award/Agreement, no contractual rights, interest, or obligation shall be delegated or subcontracted by Grantee without prior written approval of THECB. No delegation or subcontract approved by THECB shall relieve Grantee of any obligation or responsibility under this Grant Award/Agreement. It is the Parties' intent that to the extent subcontracting is approved by THECB, Grantee shall make a good faith effort to subcontract with Historically Underutilized Business(es) (HUB), as defined in Texas Government Code §2161.001(2), during the performance of this Grant Award/Agreement. The goal of the HUB program is to promote full and equal business opportunities for all businesses contracting with the State of Texas.

### **11.7 RIGHT TO AUDIT AND RECORDS RETENTION**

Grantee understands that acceptance of funds under this Grant Award/Agreement, or indirectly through a subcontract under this Grant Award/Agreement, acts as acceptance of the authority of the State Auditor's office, THECB or any successor agency, as well as any external auditors selected by the State Auditor's office, THECB or, in agreements involving federal funds, any auditors selected by the United States, including, but not limited to the cognizant federal agencies and/or federal Offices of the Inspector General (collectively referred to as "Audit Entities"), to conduct an audit or investigation in connection with those funds. Grantee further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including promptly providing all records requested. Grantee will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Grantee and the requirements to cooperate is included in any subcontract it awards.

Grantee shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Grantee in connection with the Grant Project. These records and accounts (which includes all receipts of expenses incurred by Grantee) shall be retained by Grantee and made available for inspecting, monitoring, programmatic or financial auditing, or evaluation by THECB and by others authorized by law or regulation to do so for a period of not less than seven (7) years from the date of completion of the Grant Award/Agreement or the date of receipt by THECB of Grantee's final claim for payment or final expenditure report or until any litigation/billing issues are resolved, whichever is later. If an audit has been announced, the records shall be retained until such audit has been completed. Grantee shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Services provided in this Grant Award/Agreement. Grantee and any subcontractors shall provide any Audit Entities with any information such entity deems relevant to any monitoring, investigation, evaluation, or audit.

Grantee's failure to comply with this subsection (Right to Audit and Records Retention) shall constitute a material breach of this Grant Award/Agreement and shall authorize THECB and the State of Texas to immediately assess appropriate damages for such failure. THECB reserves the right to require the reimbursement of any over-payments determined as a result of any audit or inspection of records on work performed under this Grant Award/Agreement. Grantee shall reimburse THECB for any over-payments within thirty (30) calendar days of receipt of THECB's written notice.

Awarded Applicant shall have an accounting system that accounts for cost in accordance with generally accepted accounting principles. Awarded Applicant's accounting system must include an accurate and organized file/records system for accounting and financial purposes for providing backup materials for billings.

#### **11.8 TIME AND EFFORT RECORDKEEPING**

For those personnel whose salaries are prorated between or among different funding sources, time and effort records will be maintained by Awarded Applicant that confirm the project work provided within each funding source. Awarded Applicant must adjust payroll records and expenditures based on this documentation. This requirement applies to all projects, regardless of funding sources, unless otherwise specified.

#### **11.9 UNIFORM GRANT MANAGEMENT STANDARDS (UGMS)**

Grantee agrees to follow the UGMS, including all of its applicable conditions and State Assurances ("UGMS"). UGMS is herein incorporated for all purposes into this Agreement. All applicable conditions and uniform assurances can be found at <https://comptroller.texas.gov/purchasing/grant-management/>.

#### **11.10 FORMS, ASSURANCES, AND REPORTS**

Awarded Applicant shall timely file with the proper authorities all forms, assurances and reports required by state laws and regulations. The THECB shall be responsible for reporting to the proper authorities any failure by Awarded Applicant to comply with the foregoing laws and regulations coming to the THECB's attention and may deny reimbursements or recover payments made by the THECB to Awarded Applicant in the event of Awarded Applicant's failure to so comply.

#### **11.11 SITE VISITS**

Throughout the Grant Period, the THECB and/or its representatives shall have the right to make site visits to review the SPP operations and accomplishments.

#### **11.12 SUPPLANTING PROHIBITION**

A Grant Award may not be used to replace federal, state, or local funds.

#### **11.13 CARRYOVER OF FUNDS**

At the THECB's discretion, unencumbered funds may carry over from each year of the Grant Period.

#### **11.14 APPLICABLE CONDITIONS AND UNIFORM ASSURANCES**

The standard financial management conditions and uniform assurances set out in the RFA are applicable to all grants, cooperative agreements, contracts and other financial assistance arrangements executed between state agencies, local governments, and any other sub-recipient not specifically excluded by state or federal law. All applicable conditions and uniform assurances can be found at <https://comptroller.texas.gov/purchasing/grant-management/>.

#### **11.15 STATE AUDITOR'S RIGHT TO AUDIT**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the agreement or indirectly through a subcontract under the Grant Award/Agreement. The acceptance of funds directly under the Grant Award/Agreement or indirectly through a subcontract under the Grant Award/Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to

conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

#### **11.16 CHILD SUPPORT OBLIGATION FAMILY CODE APPLICABILITY**

By signing this Grant Award/Agreement, Grantee certifies that under Section 231.006, Family Code, Grantee is not ineligible to receive payment under this Grant Award and acknowledges that this Grant Award/Agreement may be terminated and payment may be withheld or recouped if this certification is inaccurate. If this certification is shown to be false, Grantee is liable to THECB for attorneys' fees, the costs necessary to complete the Grant, including the cost of advertising and awarding a second grant award/agreement, and any other damages provided by law or Grant Award/Agreement. Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this Grant Award/Agreement, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Grant Award/Agreement may be terminated and payment may be withheld if this certification is inaccurate.

#### **11.17 DISPUTE RESOLUTION**

If THECB determines that any work product is not acceptable, THECB shall notify Grantee of the specific deficiencies in writing. Grantee shall then undertake all steps necessary to correct any deficiencies at no additional cost to THECB. In the event any issues cannot be resolved, the dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by THECB and Grantee to attempt to resolve any claim for breach of Contract. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Grant Award/Agreement.

#### **11.18 PUBLIC DISCLOSURE**

Grantee understands and agrees that no public disclosures or news releases pertaining to this Agreement, including any results, findings or reports conducted to fulfill requirements of this Grant Award/Agreement, shall be made without prior written approval of THECB.

Prior Notification. Publication, including presentations, is encouraged; however, Awarded Applicant agrees to notify the THECB prior to the publication of any information, including results, findings or reports, regarding the activities being conducted under any Contract/Grant resulting from this RFA. Awarded Applicant shall ensure the following statements are included in any published work:

*This work was supported in whole or in part by a grant from the Texas Higher Education Coordinating Board (THECB). The opinions and conclusions expressed in this document are those of the author(s) and do not necessarily represent the opinions or policy of the THECB.*

Potential Publication in News Media of any Type. Should Awarded Applicant be contacted by any news media about any information, including results, findings, or reports regarding activities being conducted under any Contract/Grant resulting from this RFA, Awarded Applicant shall notify its THECB Point of Contact, when possible, before communicating with news media. When not possible, Awarded Applicant shall notify its THECB Point of Contact immediately after concluding the communication with the news media.

Should Awarded Applicant desire to contact any news media about any information, including results, findings, or reports regarding activities being conducted under any Contract/Grant resulting from this RFA, Awarded Applicant shall notify its THECB Point of Contact before communicating with news media.

Any written publication shall be sent electronically to the THECB Point of Contact.

### **11.19 CONFIDENTIALITY, PUBLIC INFORMATION ACT, AND FERPA**

Notwithstanding any provisions of this Grant Award/Agreement to the contrary, Grantee understands that as a Texas state agency, THECB is subject to and will comply with the Texas Public Information Act, Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Grantee will cooperate with THECB in the production of documents responsive to any such requests under the Public Information Act at no additional charge to THECB.

#### **11.19.1 Public Information Act**

THECB will make a determination whether to submit a Public Information Act request to the Attorney General. This Grant Award/Agreement and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Grantee will notify THECB's contact within 24 hours of receipt of any third-party requests for information it receives relating to this Grant Award/Agreement. In accordance with Section 2252.907 of the Texas Government Code, Grantee is required to make any information created or exchanged with the State pursuant to this Grant Award/Agreement, and not otherwise excepted 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 and shall cooperate with THECB in doing so. Grantee agrees to maintain the confidentiality of information received from THECB and the State of Texas during the performance of this Grant Award/Agreement, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Grantee will not disclose any information to which it is privy under this Grant Award/Agreement without the prior written consent of THECB. Grantee will indemnify and hold harmless the State of Texas, its officers and employees, and THECB, its officers and employees for any claims for damages that arise from the disclosure by Grantee of information also held by the State of Texas or THECB to which Grantee is privy under this Grant Award/Agreement.

All submitted Applications become the property of the THECB after the RFA submittal deadline date. Upon acceptance of the Contract, all information submitted with Applicant's Application becomes public record and all information submitted with Awarded Applicant's Application becomes part of the Contract. Therefore, such information is subject to disclosure under the Texas Public Information Act, unless an exception under the Texas Public Information Act is applicable.

Any proprietary information included in Applicant's Application shall be subject to disclosure unless such proprietary information was clearly identified by Applicant, and such identification was submitted concurrently with the original submission of the proprietary information. Such identification of proprietary information shall be clearly marked in the Application on each page it appears. Such markings shall be in boldface type at least 14-point font. Additionally, Applicant shall state the specific reason(s) an exception from the Texas Public Information Act is being claimed concurrently with the original submission of the proprietary information.

If Awarded Applicant fails to clearly identify proprietary information with the original submission of the proprietary information, then those Sections will be deemed non-proprietary and made available upon public request after the Grant is awarded. The production of any material under the Grant shall not have the effect of violating or causing the THECB to violate any law, including the Texas Public Information Act.

### **11.19.2 FERPA**

Grantee agrees to comply with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g, and the implementing federal regulations, 34 CFR Part 99.

### **11.19.3 Protection of Confidential Data (Covered Data and Information)**

Grantee agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in the Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2)) and with the terms set forth in Section 11. TERMS AND CONDITIONS. 34 CFR 99.33 (a)(2) states that the officers, employees, and agents of a party that receive education record information from THECB may use the information, but only for the purposes for which the disclosure was made.

### **11.19.4 Acknowledgment of Access to Covered Data and Information (CDI)**

Grantee acknowledges that the Grant Award/Agreement allows the Grantee access to CDI.

### **11.19.5 Prohibition on Unauthorized Use or Disclosure of CDI**

Grantee agrees to hold CDI in strict confidence. Grantee shall not use or disclose CDI received from or on behalf of THECB except as permitted or required by the Grant Award/Agreement, as required by law, or as otherwise authorized in writing by THECB. Grantee agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

### **11.19.6 Return or Destruction of CDI**

Upon termination, cancellation, expiration or other conclusion of the Grant Award/Agreement, Grantee shall return all CDI to THECB or, if return is not feasible, destroy any and all CDI. If the Grantee destroys the information, the Grantee shall provide THECB with a certificate confirming the date of destruction of the data.

### **11.19.7 Breach**

Any violation of these FERPA provisions by Grantee shall be deemed a material breach of the Grant Award/Agreement.

### **11.19.8 Maintenance of the Security of Electronic Information**

Grantee shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted CDI received from, or on behalf of THECB. These measures will be extended by contract to all subcontractors used by Grantee.

### **11.19.9 Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information**

Grantee shall, within one hour of discovery, report to THECB any use or disclosure of CDI not authorized by this Grant Award/Agreement or in writing by THECB. Grantee's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the CDI used or disclosed, (iii) who made the unauthorized use and who received the unauthorized disclosure, (iv) what Grantee has done or shall do to

mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Grantee has taken or shall take to prevent future similar unauthorized use or disclosure. Grantee shall provide such other information, including a written report, as requested by THECB.

### **11.20 INFRINGEMENTS**

GRANTEE SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THECB AND THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, OFFICERS, AND DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF GRANTEE PURSUANT TO THIS GRANT/AWARD AGREEMENT. GRANTEE AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. GRANTEE SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY GRANTEE WITH THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TEXAS IF THECB AND/OR THE STATE OF TEXAS AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND DESIGNEES ARE A NAMED DEFENDANT IN ANY LAWSUIT AND THE GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. GRANTEE AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Grantee shall have no liability under this section if the alleged infringement is caused in whole or in significant part by: (i) THECB's use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product by THECB without Grantee's approval, (iii) any modifications made to the product by the Grantee pursuant to THECB's specific instructions, (iv) any intellectual property right owned by or licensed to THECB by a person or entity other than the Grantee, or (v) any use of the product or service by THECB that is not in substantial conformity with the terms of any applicable license agreement.

If Grantee becomes aware of an actual or potential claim, or THECB provides Grantee with notice of an actual or potential claim, Grantee may (or in the case of an injunction against THECB, shall), at Grantee's sole option and expense; (i) procure for THECB the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that THECB's use is non-infringing.

### **11.21 OWNERSHIP/WORK MADE FOR HIRE**

For purposes of this Grant Award, the term "Work" or "Work Product" is defined as all work papers, work products, materials, approaches, designs, specifications, systems, software, programs, source code, documentation methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the contract.

Copyright. When copyrightable material is developed in the course of or under this Grant, Awarded Applicant is free to copyright the materials or permit others to do so. The THECB shall have a royalty-free, non-exclusive, fully-paid up, no cost, transferable, worldwide, and irrevocable right and license to reproduce, publish, or otherwise use and to authorize others to use for governmental and educational purposes: (1) the copyright in any work developed under the Grant and (2) any rights of copyright to which a Awarded Applicant (or any sub-grantee or subcontractor of the Grantee) purchases ownership with Grant funds. In no event shall the Awarded Applicant (or any sub-grantee or subcontractor to the

Awarded Applicant) charge other Texas state agencies, institutions of higher education, or independent institutions of higher education (as the terms "institutions of higher education" and "independent institutions of higher education" are defined in the Texas Education Code) for any license to use any or all copyrights purchased with Grant funds or in any work developed under the Grant.

Data. The THECB has the right to: (1) obtain, reproduce, publish or otherwise use the data first produced under this Grant and (2) authorize others to receive, reproduce, publish, or otherwise use such data for governmental and educational purposes. In no event shall the Awarded Applicant (or any sub-grantee or subcontractor to the Awarded Applicant) charge other Texas state agencies, institutions of higher education, or independent institutions of higher education (as the terms "institutions of higher education" and "independent institutions of higher education" are defined in the Texas Education Code) for any license to use any or all data first produced under this Grant.

Grantee shall ensure that this provision, "Ownership/Work Made for Hire," is contained in any subcontract Grantee is authorized by THECB to award. Grantee shall not use, willingly allow, or cause to have such Work used for any purpose other than the performance of Grantee's obligations under this Grant Award/Agreement without the prior written consent of THECB; provided, however, that Grantee shall be allowed to use non-confidential materials for writing samples in pursuit of work or for other governmental or educational purposes.

#### **11.22 GOVERNING LAW AND VENUE**

The Grant Award/Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to the Awarded Applicant.

#### **11.23 ADDITIONAL GRANTEE RESPONSIBILITIES**

Grantee shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this Grant Award/Agreement, including applicable workers compensation laws, compensation statutes and regulations, and licensing laws and regulations. When requested to do so by THECB, Grantee shall furnish THECB with satisfactory proof of its compliance. Grantee shall be responsible for damage to THECB's equipment, and/or the workplace and its contents, by its, or its subcontractors' work, negligence in work, personnel, and equipment. Grantee shall be responsible and liable for the safety and health of its employees and contractors while they are performing work for THECB under this Grant Award/Agreement. Grantee shall provide all labor and equipment necessary to furnish the deliverables or perform the Services. All employees of Grantee shall be a minimum of 18 years of age and experienced in the type of work to be performed. Grantee shall permit no visitors or relatives of Grantee's employees and contractors on THECB's property unless they also are bona fide employees or subcontractors of Grantee.

Grantee hereby covenants, represents and warrants that Grantee (including, for purposes of this section, its employees, consultants, subcontractors, and agents) (1) has the technical expertise and general skills necessary to perform competently and professionally the Services in accordance with this Grant Award/Agreement, (2) is not a party to or bound by any agreement, obligation, or understanding which restricts or limits in any way Grantee's right to enter into this Grant Award/Agreement or Grantee's right or ability to perform Grantee's obligations under this Grant Award/Agreement, (3) shall not use the trade secrets, intellectual property rights, copyrights, or other proprietary rights of any third



party in the performance of Grantee's obligations under this Grant Award/Agreement without having first lawfully obtained the right, in writing, to do so, and (4) has the necessary equipment, facilities and workers to perform Grantee's obligations under this Grant Award/Agreement.

#### **11.24 CONFLICT OF INTEREST**

Grantee represents and warrants that Grantee, its principals, employees, or subcontractors have no potential conflict of interest in providing Services to THECB under this Grant Award/Agreement, and that the provision of Services under this Grant Award/Agreement does not create an appearance of impropriety. Failure to disclose a conflict of interest, at any time during the duration of this Grant Award/Agreement, shall be cause for termination of this Grant Award/Agreement. Grantee represents and warrants that the provision of deliverables and services or other performance under the Grant Award/Agreement will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

#### **11.25 DISCLOSURE OF INTERESTED PARTIES**

The THECB may not execute a contract/grant requiring approval of the Board Chair, Vice Chair, and Committee Chair until the Business Entity has presented a certificate disclosing interested parties. "Business Entity" is defined as an entity (other than a governmental entity or state agency) through which business is conducted, regardless of whether the entity is for-profit or nonprofit. The Texas Ethics Commission (TEC) has an online portal for vendors/grantees. Vendors/Grantees will need to create a username and password to complete the "Certificate of Interested Parties" form. After the form has been completed, print and sign before sending a final copy to the THECB at [Contracts@THECB.state.tx.us](mailto:Contracts@THECB.state.tx.us). The TEC portal link can be found at: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

#### **11.26 FINANCIAL INTERESTS AND GIFTS**

Grantee represents and warrants that neither Grantee nor any person or entity that will participate financially in this Grant Award/Agreement has received compensation from THECB or any agency of the State of Texas for participation in preparation of specifications for this Grant Award/Agreement.

#### **11.27 ANTITRUST**

The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Grant Award/Agreement, neither I nor any representative of the Grantee have violated any provision of the Texas Free Enterprise and Antitrust Act, Texas Business and Commerce Code Chapter 15; (2) in connection with this Grant Award/Agreement, neither I nor any representative of the Grantee have violated any federal antitrust law; and (3) neither I nor any representative of the Grantee have directly or indirectly communicated any of the contents of this Grant Award/Agreement to a competitor of the Grantee or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Grantee.

#### **11.28 EQUAL OPPORTUNITY**

Grantee represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, religion, political belief, sex, age, or disability in the performance of this Grant Award/Agreement.

### **11.29 INDEPENDENT CONTRACTOR**

Grantee shall be an independent contractor in all matters relating to this Grant Award/Agreement. Grantee and its employees, agents, and subcontractors shall not be deemed or construed to be the employees or agents of THECB for any purposes whatsoever. Grantee agrees and acknowledges that Grantee, its employees and agents, and Grantee's subcontractors are independent contractors of THECB and/or the State of Texas and are not employees of THECB or the State of Texas, and Grantee agrees that it shall have complete responsibility in the area of employment law and relations regarding its own employees, contractors, and agents, including but not limited to: wrongful discharge lawsuits, unemployment issues, workers' compensation, employment taxes, any other benefits and reimbursement due to losses in these areas. Consistent therewith, Grantee agrees that it shall make its own arrangements to provide its employees with all necessary employee benefits, including unemployment and workers' compensation benefits, and THECB is, in no way, a party to such arrangements. Regarding its employees, Grantee shall have the sole authority to hire, fire, transfer, train, evaluate, discipline, pay and assign work.

Grantee agrees and acknowledges that Grantee and Grantee's employees or assistants shall not be entitled to any State of Texas benefit on account of the services provided hereunder. If THECB or the State of Texas shall nonetheless become liable for such payments or obligations, Grantee shall promptly pay or reimburse THECB or the State of Texas for such liability or obligation.

### **11.30 ELIGIBILITY/AUTHORIZATION TO WORK IN THE UNITED STATES**

Grantee shall ensure that all personnel provided to perform work under this Grant Award/Agreement possess proof of eligibility/authorization to work in the United States in compliance with the Immigration Reform and Control Act of 1986, the Immigration Act of 1990 including any amendments already adopted or as may be adopted hereafter, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 including any amendments already adopted or as may be adopted hereafter. Grantee shall maintain written records on all personnel provided under the Grant Award/Agreement and shall provide such records to THECB upon request. Failure to maintain and provide records upon request shall represent a material breach of this Grant Award/Agreement and THECB shall have the right to terminate the Grant Award/Agreement for cause. Grantee shall ensure this section is included in all subcontracts it is authorized by THECB to enter.

### **11.31 TAXES/ WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE – INCLUDING INDEMNITY**

GRANTEE AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS GRANT AWARD/AGREEMENT, GRANTEE SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF GRANTEE'S AND GRANTEE'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCE OF THIS GRANT AWARD/AGREEMENT. GRANTEE AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THECB AND/OR THE STATE OF TEXAS SHALL NOT BE LIABLE TO THE GRANTEE, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY.

GRANTEE AGREES TO INDEMNIFY AND HOLD HARMLESS THECB, THE STATE OF TEXAS AND THEIR OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES,

RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS GRANT AWARD/AGREEMENT. GRANTEE SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY GRANTEE WITH THE OFFICE THE ATTORNEY GENERAL OF THE STATE OF TEXAS IF THECB AND/OR THE STATE OF TEXAS AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, OTHER CONTRACTORS, ASSIGNEES, AND DESIGNEES ARE A NAMED DEFENDANT IN ANY LAWSUIT AND GRANTEE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. GRANTEE AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

Applicant shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations (including the THECB rules relating to SPP as codified in Title 19, Part 1 of the Texas Administrative Code) and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of the Contract, including, if applicable, workers compensation laws, compensation statutes and regulations, and licensing laws and regulations. When requested to do so by the THECB, Applicant shall furnish the THECB with satisfactory proof of its compliance.

### **11.32 PROHIBITION ON USE OF FUNDS FOR LOBBYING**

Grantee represents and warrants that THECB's payments and Grantee's receipt of appropriated or other funds under this Grant Award/Agreement are not prohibited by Texas Government Code, Sections 556.005 or 556.008.

### **11.33 BUY TEXAS**

In accordance with Section 2155.4441 of the Texas Government Code, Grantee agrees that during the performance of a Grant Award/Agreement for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

### **11.34 PROVISION OF SERVICES**

If applicable, upon any request by THECB for the provision of any Services for which THECB has made payment, Grantee shall immediately provide such Services to THECB. Any failure to provide such Services immediately shall be considered a material breach of this Grant Award/Agreement.

### **11.35 FORCE MAJEURE**

THECB may grant relief from performance of this Grant Award/Agreement if Grantee is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Grantee. The burden of proof for the need of such relief shall rest upon the Grantee. Grantee shall notify THECB in writing if it believes that a force majeure may have occurred and THECB shall, in its sole discretion, determine if Force Majeure has occurred.

### **11.36 NOTICE**

Form of Notice. All notices and other communications in connection with this Grant Award/Agreement shall be in writing.

Method of Notice. All notices must be given (i) by personal delivery, (ii) by an express courier (with confirmation), (iii) mailed by registered or certified mail (return receipt requested), (iv) facsimile, or (v) electronic mail to the parties at the address specified in

this Grant Award/Agreement, or to the address that a party has notified to be that party's address for the purposes of this section.

Receipt of Notice. A notice in accordance with this Grant Award/Agreement will be effective upon receipt by the party to which it is given or, if mailed by registered or certified mail, upon the earlier of receipt or the third business day following mailing.

The THECB shall not be responsible for notices that are captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by THECB or Grantee's anti-virus or other security software.

### **11.37 FALSE STATEMENTS AND BREACH OF REPRESENTATIONS**

Grantee represents and warrants that all statements and information prepared and submitted to the THECB are current, complete, true, and accurate. Submitting a false statement or material misrepresentations made during the performance of a Grant Award/Agreement is a material breach of contract and may void the Grant Award/Agreement.

### **11.38 SEVERABILITY AND WAIVER**

The invalidity, illegality, or unenforceability of any provision of this Grant Award/Agreement shall in no way affect the validity, legality, or enforceability of any other provisions.

Each and every right granted to the Parties hereunder or under any other document delivered hereunder or in connection herewith, or allowed them by law or equity, shall be cumulative and may be exercised from time to time. Failure by THECB or Grantee at any time to require strict performance of any contractual provision or obligation contained herein shall not constitute a waiver or diminish the rights of either party thereafter to demand strict compliance. Neither THECB's review, approval, acceptance of, nor payment for any of the Services provided in this Grant Award/Agreement shall be construed to operate as a waiver of any rights under the Grant Award/Agreement, or of any cause of action arising out of the performance of the Services required by the Grant Award/Agreement.

### **11.39 HUMAN TRAFFICKING PROHIBITION**

Under Section 2155.0061 of the Texas Government Code, Prohibition on Certain Bids and Contracts Related to Persons Involved in Human Trafficking, the Grantee certifies that the individual or business entity named in this Grant Award/Agreement is not ineligible to receive the specified contract and acknowledges that this Grant Award/Agreement may be terminated and payment withheld if this certification is inaccurate.

### **11.40 FOREIGN TERRORIST ORGANIZATIONS**

Grantee represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

### **11.41 SYSTEM FOR AWARD MANAGEMENT**

THECB is federally mandated to adhere to the directions provided in the President's Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it. Grantee certifies that Grantee is in compliance with the State of Texas statutes and rules relating to procurement and that Grantee is not listed on the federal government's terrorism watch list as described in

Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.

**11.42 NOTIFICATION OF CONTRACT**

(Only applies to Employees of a Texas state agency or any institution of higher education.)

THECB will send notification to the key personnel’s employer, if the personnel are otherwise employed outside of their contracted work with THECB.

**11.43 INSURANCE**

If applicable, grantee agrees to maintain at its expense insurance as required for the work being performed under this Grant Award/Agreement. Such insurance will protect THECB from all claims for bodily injury, death, or property damage which may arise out of or result from the performance of the Grantee’s obligations under the Agreement. Grantee represents and warrants that it will, within ten (10) business days of award of contract, provide THECB with current certificates of insurance or other proof acceptable to THECB of the following insurance coverage:

Grantee must maintain Workers' Compensation insurance coverage in accordance with statutory limits.

<b>Minimum Required Amounts of Insurance Coverage</b>	
<b>Type of Insurance</b>	<b>Each Occurrence/Aggregate</b>
Workers’ Compensation	Statutory Limits
Employer’s Liability	
Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Each Employee
Bodily Injury by Disease	\$1,000,000 Policy Limit
Commercial General Liability (occurrence based)	Bodily Injury and Property Damage \$1,000,000 Each Occurrence Limit \$2,000,000 Aggregate Limit \$5,000 Medical Expense each person \$2,000,000 Products/Completed Operations Aggregate Limit \$1,000,000 Personal Injury and Advertising Liability \$50,000 Damage to Premises Rented
Automobile Liability All Owned, Hired and Non-Owned Vehicles	\$500,000 Combined Single Limit (for each accident)
Umbrella/Excess Liability	\$1,000,000 Per Occurrence

Note: The required insurance coverage must be issued from a company or companies that:

- (1) Have both a Financial Strength Rating of “A” or better from A.M. Best Company, Inc.; and
- (2) Have a Financial Size Category Class of “VII” or better from A.M. Best Company, Inc.

All insurance policies for required coverage must be issued by companies authorized to do business under the laws of the State of Texas and in a form satisfactory to THECB. All required insurance contracts must:

- (1) Be written on a primary and non-contributory basis with any other insurance coverages Grantee currently has in place; and
- (2) Include a Waiver of Subrogation Clause.

All certificates of insurance for required coverage other than workers compensation and professional liability must name the State of Texas and its Officers, Directors, and Employees as additional insureds.

Grantee shall:

- (1) Provide written notice to THECB by e-mail at [Contracts@thecb.state.tx.us](mailto:Contracts@thecb.state.tx.us) and by U.S. First Class Mail to 1200 E. Anderson Lane, Austin, TX 78752, at least 30 calendar days prior to any cancellation, non-renewal, or material change of a required policy;
- (2) Ensure all insurance policies and certificates of insurance for required coverage are written to include all products, services, and locations related to Grantee's performance under the Grant Award/Agreement; and
- (3) Deliver to THECB by e-mail at [Contracts@thecb.state.tx.us](mailto:Contracts@thecb.state.tx.us) and by U.S. First Class Mail to 1200 E. Anderson Lane, Austin, TX 78752, all renewal policies at least ten calendar days prior to any expiration of a required policy. All renewal policies and corresponding certificates of insurance must meet all terms set forth in the Grant Award/Agreement.

Grantee must ensure that all provisions of the Grant Award/Agreement concerning liability, duty, and standard of care, together with the indemnification provision, are underwritten by contractual liability coverage sufficient to include such Grantee's obligations under the Grant Award/Agreement.

#### **11.44 KEY PERSONNEL**

Grantee shall assign only qualified personnel to this Grant Award/Agreement. Grantee, in its reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified to accomplish the required Services. Grantee shall provide to THECB prior written notice and obtain written approval from THECB prior to any change in key personnel involved in providing Services under this Grant Award/Agreement. Subcontractors providing services under the Grant Award/Agreement shall meet the same requirements and level of experience as required of Grantee (see "Assignment, Delegation, or Subcontracting" provision for additional conditions regarding subcontracts). No subcontract under this Grant shall relieve Grantee of responsibility for ensuring the required Services are provided. THECB, in its sole discretion, may require Grantee to remove any employee, contractor, subcontractor, or vendor of the Grantee from providing work or services under the Grant Award/Agreement. Grantee shall replace such removed personnel expeditiously so that its services are performed on a timely basis.

Grantee represents and warrants that Grantee has not and Grantee's employees who will be participating in the funded project/program have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Grantee has fully advised THECB as to the facts and circumstances surrounding the conviction and has received THECB's prior written consent to proceed.

#### **11.45 DEBTS AND DELINQUENCIES TO THE STATE**

Grantee agrees that any payments due under the Grant Award/Agreement shall be applied towards any debt or delinquency that is owed to the State of Texas.

#### **11.46 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES**

Grantee represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice, in any administrative hearing or court

suit, and further, that if it has been the subject of either or both such allegations, that Grantee has not been found to be liable for any such practices in such proceedings. Grantee certifies that it has no officers who have served as officers of other entities which have been the subject of allegations of Deceptive Trade Practices Act conduct, violations thereof, or allegations of any unfair business practices, in an administrative hearing or court suit and further, that if such officer(s) has been the subject of either or both such allegations, that such officers have not been found to be liable for any such practices in such proceedings.

#### **11.47 SUSPENSION AND DEBARMENT**

Grantee certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

#### **11.48 EXCLUDED PARTIES**

Grantee 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.

#### **11.49 E-VERIFY**

U.S. Department of Homeland Security's E-Verify System

By entering into this Grant Award/Agreement, the Grantee certifies and ensures that it utilizes and will continue to utilize, for the term of this Agreement, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

All persons employed to perform duties within Texas, during the term of the Grant Award/Agreement; and

All persons (including subcontractors) assigned by the Grantee to perform work pursuant to the Grant Award/Agreement, within the United States of America.

#### **11.50 DRUG FREE WORK PLACE**

The Grantee shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Grantee shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

#### **11.51 NO COMMISSIONS**

THECB shall not pay any commissions to Grantee under this Grant Award/Agreement.

#### **11.52 APPLICABLE TAXES**

This Grant Award/Agreement shall not be construed so as to supersede the laws of the United States or the State of Texas that accord the State of Texas, THECB, and all departments, agencies, and instrumentalities of the State of Texas exemptions from payment(s) of all taxes of whatever kind. More specifically, to the extent permitted by applicable law, THECB shall not directly or indirectly be liable for taxes of any kind. Grantee

represents and warrants that it shall pay all taxes or similar amounts resulting from this Grant Award/Agreement, including, but not limited to, any federal, State, or local income, sales or excise taxes of Grantee or its employees. To the extent permitted by applicable law, THECB shall provide all applicable tax exemption certificates upon the Grantee's request.

### **11.53 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS**

Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Texas Administrative Code (TAC) Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

Grantee shall provide Department of Information Resources (DIR) with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Grantees not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

### **11.54 SMOKING POLICY**

THECB has a policy of being a smoke-free agency. The policy reflects THECB's commitment to providing a healthy environment for all THECB employees and visitors. This policy prohibits smoking within any state building. The Grantee, by acceptance of this Grant Award/Agreement, agrees to abide by this policy when on the property of THECB.

### **11.55 SUBSTITUTIONS**

Substitutions are not permitted without the written approval of THECB.

### **11.56 CONTRACTING INFORMATION RESPONSIBILITIES**

(APPLICABLE FOR CONTRACTS \$1 MILLION AND ABOVE)

Grantee represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the Grant Award/Agreement and the Grantee agrees that the Grant Award/Agreement can be terminated if the Grantee knowingly or intentionally fails to comply with a requirement of that subchapter.

### **11.57 CYBERSECURITY TRAINING**

Grantee represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training program.

### **11.58 DISASTER RECOVERY PLAN**

Upon request of THECB, Grantee shall provide the descriptions of its business continuity and disaster recovery plans.



### **11.59 ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

This Grant Award/Agreement consists of the following documents: the final executed Grant Award/Agreement (including its Exhibits and any Amendments), THECB's Request for Applications (RFA), and the Grantee's response to the RFA.

In the event of conflicts, contradictions, or inconsistencies between or among these documents, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of precedence:

(1) the original Request for Application ("RFA") including any addenda issued, (2) addenda to the Grantee's Application (if any), and (3) Grantee's Application. This Grant Award/Agreement (including its Exhibits and any Amendments) contains the final, complete and exclusive understanding of the Parties, and supersedes all prior contemporaneous, oral or written understandings, representations, and negotiations between Parties relating to the subject matter of this Grant Award/Agreement. The Parties further agree that this Grant Award/Agreement may not in any way be explained or supplemented by a prior or existing course of dealings between the Parties, by usage of trade or custom, or by any prior performance between the Parties pursuant to this Grant Award/Agreement or otherwise.

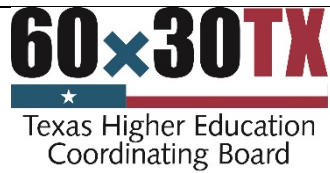
If language contained in a particular Section of the RFA is found to be in conflict with language in another Section, the most stringent requirement(s) shall prevail.

## APPENDIX A: RFA DEFINITIONS

The following definitions shall apply:

1. **Applicant** – An eligible entity, as defined in Section 3 of this RFA, submitting an Application in accordance with the terms and conditions of this RFA.
2. **Application** – The final document submitted by an Applicant to THECB in response to and in accordance with the terms of this RFA.
3. **Awarded Applicant** – The successful recipient ultimately awarded a Grant by THECB who is responsible for performing all activities required to fully comply with Grant performance requirements and all Grant terms and conditions.
4. **Medical School** – A public or independent medical institution that awards the doctor of medicine (M.D.) or doctor of osteopathic medicine (D.O.) degree, as defined in Texas Education Code, Chapter Section 61.003(5) or 61.501(1).
5. **NOGA** – Notice of Grant Award – Term applied to the official document used by THECB to notify grantees that funding has been approved. NOGAs include such information as award amount, project and budget periods, and specific award terms and conditions. The NOGA creates a legally binding agreement between the parties and incorporates the RFA and the Application into the agreement. Throughout this RFA the terms “NOGA”, “Contract”, and “Grant” are used interchangeably.
6. **State Fiscal Year** – The period of time beginning September 1 and ending on the following August 31, both dates inclusive.
7. **State of Texas Business Days** – Monday through Friday, 8:00 a.m. to 5:00 PM CT/CDT, except for scheduled state of Texas and national holidays.
8. **THECB** – The Texas Higher Education Coordinating Board, an agency of the State of Texas.
9. **Rural County** – A rural county contains a population of not more than 125,000 (Section 487.751, Government Code, Texas Legislative Council, July 2016).

## APPENDIX B: SAMPLE NOTICE OF GRANT AWARD



THECB Award Number: {XXXX}  
Appropriation Year (AY): 2020

### Notice of State Grant Award to {contracted\_party}

Grantee Name and Address:  {contracted_party} {contractedPartyAddress} {contractedPartyCity}, {contractedPartyState} {contractedPartyZip}	Grant Title: <b>Statewide Preceptorship Program</b>
	Amount of Award: \$ {total_\$}
	Division: <b>Funding Code and Division Name, Ex: 070 Academic Quality and Workforce</b>
	Term of Grant: <b>Month Day, Year – Month Day, Year</b> All funds must be expended by Month Day, Year.
	Payment Method: – will vary. <b>Funds are payable after execution of the NOGA 50 percent payable upon execution. 50 percent payable upon receipt and approval by THECB staff of reporting requirements as detailed in the RFA. The advancement of funds is necessary to enable the Grantee to fully perform the Services described in its Application. All funds will be disbursed using AY 2020 funds.</b>

Authority: **Texas Education Code, Section 58.006**

The Texas Higher Education Coordinating Board’s (“THECB”) and the Grantee’s (collectively, referred to as “the parties”) execution of this Notice of Grant Award creates a legally binding agreement between the parties. The Program requirements (e.g., objectives, scope, budget, methodology) as stated in (1) the original Request for Application (“RFA”) including any addenda issued, (2) addenda to the Grantee’s Application (if any), and (3) Grantee’s Application are incorporated into and made a part of this Notice of Grant Award for all purposes, supersede any prior or contemporaneous understandings between the parties pertaining to the subject matter herein whether oral or written, and collectively constitute the entire agreement between the parties. In the event of a conflict in the language contained in the incorporated documents, conflicts shall be resolved by reference to the language contained in the documents in the order listed above.

Any changes in the approved Grant must follow THECB’s amendment process as defined in the RFA. If not a strictly reimbursable award, any funds received by Grantee and not expended prior to the end of the grant term indicated above shall be returned to THECB within ninety (90) calendar days unless otherwise agreed by THECB and Grantee.

<b>Approving THECB Official:</b>	<b>Approving Grantee Official:</b>
{signContact} {signContacttitle}	{signed_by} {signed_bytitle}
<b>Date:</b>	<b>Date:</b>