

**Texas Higher  
Education  
COORDINATING BOARD**

REQUEST FOR APPLICATIONS

Open Educational Resources (OER) Grant Program  
2023-2025

RFA #28634

INQUIRY DEADLINE: 11:59 p.m. CST/CDT, February 8, 2023

APPLICATION DEADLINE: 11:59 p.m. CST/CDT, February 10, 2023

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1. OVERVIEW OF FUNDING OPPORTUNITY

1.1. PROGRAM TITLE

Open Educational Resources (OER) Grant Program

1.2. SYNOPSIS OF PROGRAM

The Open Educational Resources (OER) Grant Program was established to encourage faculty at institutions of higher education to adopt, modify, redesign, or develop courses that use only open educational resources (OER).

This specific Request for Applications (RFA) solicits applications from Texas public institutions of higher education to adopt, modify, redesign, or develop courses that use only OER.

1.3. PROGRAM AUTHORITY

The authority for the OER Grant Program is found in the General Appropriations Act, Senate Bill (S.B.) 1, Article III, Section 49, 87th Legislative Session Regular Session.

THECB's implementing regulations are found in Texas Administrative Code (TAC) Title 19, Part I, Section 4.230 through 4.238.

1.4. POINT OF CONTACT

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

Carrie Gits, Director

Division of Digital Learning

Texas Higher Education Coordinating Board

Email: [OERGP@highered.texas.gov](mailto:OERGP@highered.texas.gov)

Phone: 512-427-6541

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 [OERGP@highered.texas.gov](mailto:OERGP@highered.texas.gov).

2. AWARD SUMMARY

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

THECB expects to award two categories of grant awards under this RFA:

Development Grants:

## Open Educational Resources Grant Program

- A maximum of \$25,000 to Texas institutions of higher education to develop new or substantially improve existing OER for one or more courses as detailed in section 3.2 of this RFA. Application should also include a plan for including faculty from at least one other Texas public institution as contributors or peer reviewers. These grants should be matched with one-to-one contributions from the institution or institutions (contributions can be in-kind, but cannot include faculty salaries).

### Implementation Grants:

- A maximum of \$5,000 to Texas institutions of higher education to support the substantial redesign of one or more courses to incorporate existing OER resources.

Contingent upon the amount of appropriation available, the THECB expects to award approximately five to six Development Grants and 15 to 20 Implementation Grants for the Grant Period (upon execution of the NOGA – August 31<sup>st</sup>, 2025).

## 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<sup>st</sup>, 2025. Awarded Applicants will have contractual obligations that extend beyond the Grant Period.

At the THECB's sole discretion, the second half 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.

## 2.3. SELECTION FOR FUNDING

The funding available to support Open Educational Resources (OER) Grants in Fiscal Years (FY) 2023 and 2024 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. A Calendar of Events for the entire Grant Period is in Appendix B.

Dates	Application Steps
February 8, 2023	Inquiry Deadline
February 10, 2023	Application Deadline
March 2023	Anticipates THECB Announcement of Grant Awards
Upon execution of NOGA	Grant Period Begins

## 3. ELIGIBILITY REQUIREMENTS

### 3.1. ELIGIBLE APPLICANT

Entities in the following categories and located in the state of Texas are eligible to apply for an Open Educational Resources (OER) Grant Award:

- (a) A Texas Institution of higher education as defined in Texas Education Code 61.003(8)

While collaborative projects are encouraged, one public institution must be identified as the Applicant.

See Appendix A, Definitions, for further description of the entities listed in (a) above.

### 3.2. ELIGIBLE PROJECTS

Eligible applicants under this RFA will propose to either:

1. Develop new or substantially improve existing OER for one or more eligible courses (Development Grant).
2. Redesign one or more courses to incorporate existing OER (Implementation Grant).

Since the overall goal of the program is to offer courses that only use OER, eligible projects will be comprised of open educational resources for complete courses. Courses will require only open educational resources. Course materials will be provided to students at no cost, other than the cost of printing, should students choose to print the course materials. The courses should be taught by one or more faculty members during each of the four semesters/terms (including summer, if applicable) immediately following the implementation of each applicable course.

Courses eligible for consideration include:

1. Academic lower division and Academic upper division courses leading to credentials of value with priority given to the development of full course curricula.
2. Courses from the Workforce Education Course Manual (WECM) course inventory for courses leading to credentials of value that correspond to high-need occupations.

The proposed courses must not be a part of another grant program or funding source offering funds to develop OER (e.g., Achieving the Dream). Institutions who employ faculty member Awardees of previously state funded or GEER funded OER Grant Programs are eligible but must not propose the same project previously funded by the state or GEER OER Grant Program.

All resources created under the OER grant program must be made available for inclusion in the state [OERTX Repository](#).

Materials created should either reside in the public domain or be licensed under a Creative Commons Attribution (CC BY) license. Creative Commons (CC) licenses allow content creators to retain copyright while allowing others to copy, distribute, and make some uses of their work. A CC license ensures licensors get credit for their work. Additionally, a CC license is international and continues as long as applicable copyright lasts. CC licenses have become the standard worldwide for copyright of OER. For more information on CC licenses, see “About the Licenses” on the CC website (<https://creativecommons.org/licenses/>). Applicants wanting to copyright OER developed for this grant program under a CC license that differs from that stated above must provide a rationale in the application.

### 3.3. PRIORITY PROJECTS

Applications that meet one or more of the Priority Selection Criteria in Section 7.2 will be given priority in the award selection process.

3.4. MAXIMUM NUMBER OF APPLICATIONS PER APPLICANT

An Eligible Applicant may submit a maximum of one (1) Application for a Development Grant and a maximum of one (1) Application for an Implementation Grant for a particular course.

4. APPLICATION SUBMISSION

4.1. APPLICATION DEADLINE: 11:59 p.m. CDT/CT, February 10, 2023

Applications must be:

- completed according to the guidelines in Section 8
- submitted by an authorized agent of the Applicant entity

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*Late or incomplete Applications will not be accepted. Applications submitted to an address different from [OERGP@highered.texas.gov](mailto:OERGP@highered.texas.gov) will **not** be accepted.*

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

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- submitted electronically via email to [OERGP@highered.texas.gov](mailto:OERGP@highered.texas.gov) to the Point of Contact listed in Section 1.4.

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. 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 2017, the 85th Texas Legislature passed Senate Bill 810, which added Section 61.0668, Texas Education Code, to “encourage faculty at institutions of higher education to adopt, modify, redesign, or develop courses that use only open educational resources.” An allocation methodology and rules pertaining to the OER grant program were drafted with stakeholder input through negotiated rulemaking. Since 2017 THECB has awarded a total amount of \$360,620, with 35 awards to faculty.

In 2021, the 87th Texas Legislature appropriated \$212,049 for the 2022-2023 biennium to the OER Grant Program. Texas Education Code, Section 61.0668, which defined the OER Grant Program, expired on September 1, 2021. The expired legislation identified faculty employed by a Texas public institution of higher education as eligible applicants for grant funds. With stakeholder input through negotiated rulemaking, THECB proposed amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter O, concerning the OER Grant Program. The proposed amendments were created to remove undue burden of grant administration for individual faculty members by having public institutions of higher education serve as eligible applicants for the OER Grants. The new rules were adopted by the Board on October 27, 2022.

The requirements for the application/award have been modified to reflect the adopted rule changes and are detailed in this RFA.

## 6. PROJECT REQUIREMENTS

### 6.1. FUNDING RESTRICTION

The proposed courses must not be a part of another grant program or funding source offering funds to develop OER. Institutions that employ faculty member Awardees of the previous state-funded OER Grant Program funds or GEER OER Course Development and Implementation Grant Program funds are eligible for this grant program but must not propose the same project funded by the state OER Grant Program or GEER OER Course Development and Implementation Grant Program.

OER Grant Program 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 OER Grant Program as documented in the Applicant’s Budget and Timeline. OER Grant funds cannot be used to supplant faculty salaries.

## 6.2. ALLOWABLE COSTS AND PROHIBITED COSTS

### 6.2.1. Allowable Cost Categories.

Reasonable costs in the budget categories below are allowable:

Each Grant Award is made available to the awarded institution for the development and delivery of course materials that are “in the public domain or have been released under an intellectual property license that permits the free use, adaptation, and redistribution of the resource by any person.” Course materials may include full course curricula, course materials, modules, textbooks, media, assignments, software, and any other tools, materials, or techniques, whether digital or otherwise, used to support knowledge.

Examples of categories that Award funds may be used for include: instructional design, project management, funding for faculty above and beyond salary, stipends for student work, professional development costs, digital media production, or other costs directly related to content development.

### 6.2.2. Prohibited Costs.

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

- Costs incurred prior to the grant period;
- Indirect costs;
- Scholarship, loan assistance, or other forms of financial assistance for students;
- Foreign travel;
- Travel not consistent with state of Texas guidelines.

### 6.2.3. Budget Changes

Not applicable for this RFA.

## 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 goal of the RFA to offer courses that only use OER. Selection criteria shall be based on eligibility requirements, funding priorities, and project quality, as determined by reviewer criteria, 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 30 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 Sections 7.2 and 7.3.

## 7.2. PRIORITY CRITERIA FOR AWARD SELECTION

### Funding Priority One

For Development Grants only:

In addition to addressing the overall requirement in Section 3.2, an eligible Applicant that proposes to develop full course curricula as defined in Appendix A may receive up to 5 additional points during the application evaluation.

### Funding Priority Two

For Development Grants only:

In addition to addressing the overall requirements in Section 3.2, an eligible Applicant that proposes projects to develop materials for the following courses in the Academic Course Guide Manual PSYC 2314, BIOL 2420/2320+2120, BIOL 1322/HECO 1322, ENGL 2311, CHEM 1405, CHEM 1305, CHEM 1105, SOCI 2319, or HUMA 2319 may receive up to 5 additional points during the application evaluation.

### Funding Priority Three

For Development Grants only:

In addition to addressing the overall requirement in Section 3.2, an eligible Applicant that proposes cross-institutional collaboration (i.e., two-year institution with a four-year institution) may receive up to 5 additional points during the application evaluation.

### Funding Priority Four

In addition to addressing the overall requirement in Section 3.2, an eligible Applicant that proposes projects that incorporate student participation in the creation, adaptation, and/or evaluation of the resources may receive up to 5 additional points during the application evaluation.

## 7.3. GENERAL CRITERIA FOR AWARD SELECTION

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

Criteria for Award Selection:

1. The project proposed includes the projected amount of money saved due to the use of OER in the course.
2. The project is well defined and grounded in principles of effective instructional design.
3. The project can be completed within the Grant Period, exclusive of teaching requirements.
4. The proposed project is realistic and appropriate to the goals identified by the Applicant.
5. The proposed activities and strategies are appropriate and are described in sufficient detail.

6. Project activities would likely continue after the Grant Period ends.
7. Project goals align with the overall goals of the RFA to adopt, modify, redesign, or develop courses that use only open educational resources (OER).
8. The course materials proposed are of sufficient quality to enhance course curricula, including student learning outcomes/objectives aligned to the OER as well as to assessments.
9. The course materials are provided to the student at no cost, other than the cost of printing.
10. The project plan proposed includes a description for how course materials will be peer reviewed.
11. The proposed project evaluation for determining the success of the project is described in sufficient detail and includes relevant information/data to be collected.
12. The expected outcomes are realistic.
13. The expected outcomes would make a significant impact on reducing the cost of educational resources in the course(s).
14. The expected outcomes would have an overall positive or neutral impact on student performance in terms of grades and drop/withdraw rates.
15. There are sufficient staffing and resources to ensure that project evaluation information/data will be properly collected and reported.
16. There are sufficient staffing and resources to support the creation or adaptation of OER to ensure open licensing and accessibility requirements are met.

Reviewers will use the General Selection Criteria to score applications. The Application Evaluation Form is in Appendix D.

#### 7.4. RECOMMENDATION FOR FUNDING

THECB staff shall make a recommendation of selected Applicants to be funded for approval in accordance 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 Forms are available on the THECB website:

<https://www.highered.texas.gov/oergp>

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 7.2 and 7.3 of this RFA.

The file name shall read as the initials of the Applicant institution\_Course Number associated with project\_Application.pdf (e.g., UNT\_SOC12319\_Application.pdf)

#### 8.1. CERTIFICATION OF APPLICATION INFORMATION (FORM 1)

The Certification Page provides general information about the Application, including Applicant name(s) and institution(s); proposed course numbers(s) and title(s); amount requested; category of grant application (Development or Implementation); and authorized signatures. The Certification Page provides a signature by an authorized institutional 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 institution.

## 8.2. PROJECT NARRATIVE (FORM 2)

The project narrative should not exceed five (5) pages.

### 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.

Specify the category of grant application (OER Development or OER Implementation), course name and number of the proposed course(s), how often each course is offered, and total enrollments for the most recent offerings of each course at the Applicant's institution. Explain how OER funding, if awarded, would enhance the course curricula, including learning outcomes, while ensuring that the students incur no cost for the educational resources used in the course except for printing. Describe each course's current use of course materials (e.g., textbooks or supplemental material) to support instruction and learning, the cost to the student for those resources, and the potential savings to students through the project.

Describe in detail how the project will implement OER. Address such questions as:

- What are the anticipated challenges of replacing currently utilized course materials with OER and how do you plan to overcome those challenges?
- What existing OER will you adopt and/or adapt/revise, if applicable, and are they available to the students at no cost other than the cost of printing?
- Have the proper permissions been obtained, if needed, for all resource(s), and can you ensure that materials created can be licensed under a CC BY license?
- What format(s) will be used (e.g., PDFs, e-text, video, etc.)?
- How can students, faculty, and others access the OER?
- How will accessibility requirements and universal design principles for these materials be met?
- How will alignment be assured between learning outcomes and assessments, i.e. that the stated goals of the course match what you are actually assessing?
- How will OER support student mastery of learning?
- How will the project incorporate principles of effective instructional design?
- How will instructional designers, librarians, or other staff support the project?
- Which four academic semesters do you anticipate offering the developed course(s) that involve only OER?
- How will the OER be sustained, such as how it will be updated and maintained for continuous improvement of the resource?

- How will the OER created or adopted be peer reviewed?

Describe how you, your team, and/or your institution will continue the project or similar activities after the Grant Period ends. You should identify any resources (time, effort, funds, etc.) that will be needed over the longer-term to sustain the effective use of the OER in the course(s) to support the learning outcomes, provide continuous improvements and edits to the OER, and how those needs can be met.

For Development Grants only:

- Application should also include a plan for including faculty from at least one other Texas public institution as contributors or peer reviewers. Potential priority points will be awarded to Applications which include cross-institutional collaboration, as detailed in Section 7.2.

### 8.2.3 Description of Applicant and Partners

Provide information on the Applicant's qualifications and experience with teaching the specified course(s) and with digital learning, including OER if applicable. Describe how the Applicant will implement and oversee the proposed project. This shall include the design and development of course materials, gathering of data on courses taught using the course OER materials, and reporting such data to the THECB Point of Contact for at least four semesters after the development of the course(s) that use only OER.

Collaborative applications are encouraged, and the qualifications of all team members should be provided; however, one institution should be designated as the Applicant who will receive funding.

### 8.2.4 Assessment of Need

Provide a brief overview of significant OER currently available, if any, for the subject matter (e.g., Psychology, History, etc.) of each course.

## 8.3. PROJECT WORK PLAN OR TIMELINE (FORM 3)

Project Work Plan should include the Project Goal Statement, objectives, activities, and outcomes. Generally, each objective would be supported by one or more activity, process, or deliverable. If the Applicant is selected for an Award, it is expected that the Project Work Plan will be more fully developed and expanded over the course of the grant period, in conjunction with project reporting and verification requirements. The Project Work Plan should not exceed two (2) pages.

### 8.3.1 Project Goal Statement

The Project Goal Statement shall identify the ultimate outcome(s) of the project. Goals may go beyond cost savings to students and reflect outcomes related to student success, course material enhancement, and pedagogical transformation.

### 8.3.2 Major Project Objectives and Expected Outcomes

Major Project Objectives measure the progress toward the project goal. Objectives should be specific and measurable. Applicants should include at least three (3) project objectives and expected outcomes that support achievement of the project goal identified in Section 8.3.1

The expected outcomes should be clearly articulated, relate to the objective and include appropriate measures for assessment of those objectives.

#### 8.4. PROJECT EVALUATION

Project evaluation is incorporated into the Project Work Plan. 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 following five performance measures, related to impact, affordability, and effectiveness (learning outcomes and retention), are required for each OER-funded course under this RFA:

- the number of students who have completed the course associated with the grant;
- an estimate of the amount of money saved due to the use of OER used in the course;
- the number of faculty members known to have adopted the OER associated with the grant for a course;
- whether the overall comparative impact on student performance in terms of grades in the four semesters/terms of the reporting period was positive, neutral, or negative over the four semesters prior to the semester in which the OER funds were awarded; and
- whether the overall comparative impact on drop/withdraw rates in the four semesters/terms of the reporting period was positive, neutral, or negative over the four semesters prior to the semester in which the OER funds were awarded.

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

#### 8.5. BUDGET (FORM 4)

Include a summary project budget including a description of the local matching commitment for Development Grants. Award funds may be used for instructional design, project management, faculty summer salaries, digital media production, or other costs directly related to content development. Institutional matching is required for Development Grants and may include, but is not limited to, in-kind contributions for instructional designers or project managers and grant administration costs.

#### 8.6. FINANCIAL VIABILITY

Not applicable for this RFA.

#### 8.7. ATTACHMENTS

The Performance Measures and Outcomes form projects outcomes of key performance measures that are quantifiable and aligned with the legislative requirements and the project's goals. The outcomes of these measures should indicate the extent of the project's success. Performance measures that are required for all OER program funded projects are specified in Section 8.4 and are included in the Performance Measures and Outcomes form. The evaluation of the project and the reporting of its outcomes should follow the Family Educational Rights and Privacy Act (FERPA) regulations and guidelines.

To complete the Performance Measure and Outcomes form, Applicant will specify a baseline and projected outcome for each of the five required performance measures. For each course in the proposed project, Applicant shall include all five required performance measures and provide a baseline and projected outcome for each performance measure. Applicant will include the following information:

- **Baseline:** For each performance measure, this will be based on available information at the time of the grant application.
- **Projected per-semester outcome:** Present the best estimate for each performance measure every time the course is taught after the OER development.
- **Actual outcomes:** After the OER development, the course is required to be offered in four separate semesters/terms. Based on the reporting timeline specified in this RFA, awarded applicant will report the actual outcome for each of the five required performance measures for each semester/term the course is offered, beginning with “Semester 1.” As a part of the actual outcome, specify the academic semester/term (e.g., Fall 2023) the course is offered.

## 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 OER Notice of Grant Award (NOGA, Appendix E), 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 FUNDS DISBURSEMENT AND PAYMENT TERMS

OER Awards are funded through state general appropriations. Awarded Applicant shall receive payments through the Texas Comptroller of Public Accounts. Payments shall be provided on receipt of grant deliverables.

A one-half (50%) payment shall be made upon verification that course materials have been posted to the state OER repository (OERTX) according to provided instructions by mid-semester fall 2023, and one-half (50%) at the end of the first term in which developed course materials have been used and updated accordingly in OERTX to reflect any needed continuous improvement of the OER. The total of grant payments will not exceed the amount provided by the grant award.

At the THECB’s sole discretion, the second half of grant funding is contingent upon the Awarded Applicant using grant funds appropriately, meeting project benchmarks, and producing expected outcomes.

### 9.3 LAST DAY OF EXPENDITURES

All allowable grant-related expenses must be incurred on or before August 31, 2025. Expenses incurred after this date cannot be charged to the OER Grant Program.



#### 9.4 RETURN OF UNEXPENDED FUNDS

Awarded Applicants shall return any unexpended funds to THECB within ninety (90) days after the end of the Grant Period days unless otherwise agreed by THECB and Grantee.

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

#### 9.5. GRANT EXTENSION

Extension of the Grant Period for the project may be granted at the sole discretion of THECB. An Awarded Applicant may be eligible to request a maximum 6-month grant extension to fully complete grant project activities and goals. Awarded Applicant must request an extension by email to the point of contact for the Open Educational Resources Grant Program. Extensions are subject to the availability of appropriated funds and to the eligibility requirements.

If additional funding is available to support Open Educational Resources Grant Program, the THECB Point of Contact will notify eligible grantees. Additional documentation and/or work may be required.

### 10. MONITORING AND REPORTING REQUIREMENTS

#### 10.1. MONITORING

The THECB staff shall monitor and oversee OER Award 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 project reports listed in Sections 10.2 and 10.3 for a project funded as a result of this RFA. The THECB will provide a template and instructions for electronic submission for required reports.

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 grant funds be returned. If a required report is not accepted by THECB, the Award Applicant will be required to revise and resubmit. 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 four (4) written project/program reports as specified by the THECB on or before the following dates:

1. Initial expenditure report with link to resource in OERTX due September 29, 2023,
2. Interim Project & Expenditure Report due December 31, 2023,
3. Interim Project & Expenditure Report due December 31, 2024, and
4. Final Project & Expenditure Report due September 16, 2025.

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

- (a) Narrative status report on the development of an OER project.
- (b) Project Work Plan. The work plan submitted with the Applicant's Application shall be updated and supplemented for each interim report and for the final report.

Each report should include, at a minimum:

- the number of students who have completed the course associated with the grant;

- an estimate of the amount of money saved due to the use of OER used in the course;
- the number of faculty members known to have adopted the OER associated with the grant for a course;
- whether the overall comparative impact on student performance in terms of grades in the four semesters/terms of the reporting period was positive, neutral, or negative over the four semesters prior to the semester in which the OER funds were awarded; and
- whether the overall comparative impact on drop/withdraw rates in the four semesters/terms of the reporting period was positive, neutral, or negative over the four semesters prior to the semester in which the OER funds were awarded.

(c) Plan for Sustainability on OERTX. This section should include a plan for continuous improvement of the OER. This includes maintaining and editing the OER used in the course(s) on [OERTX](#) and strategies that will be used to keep the OER up to date.

(d) Faculty Reflection. Final Project Report should include a section for faculty self-reflection describing pedagogical impact and student experience.

(e) Expenditure Reports.

### 10.3. FINANCIAL REPORTS

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

1. Initial expenditure report due September 29, 2023,
2. Interim Expenditure Report due December 31, 2023,
3. Interim Expenditure Report due December 31, 2024 and
4. Final Financial Report due September 16, 2025.

## 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, LOCAL GOVERNMENT ENTITIES, OR POLITICAL SUBDIVISIONS OF THE STATE OF TEXAS)

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 OER Grant Program 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.

#### 11.17 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

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

(THIS SECTION DOES NOT APPLY TO STATE AGENCIES, LOCAL GOVERNMENT ENTITIES, OR POLITICAL SUBDIVISIONS OF THE STATE OF TEXAS)

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. See Section 3.2 for Copyright guidelines for this 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@highered.texas.gov](mailto:Contracts@highered.texas.gov). 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

(THIS SECTION DOES NOT APPLY TO STATE AGENCIES, LOCAL GOVERNMENT ENTITIES, OR POLITICAL SUBDIVISIONS OF THE STATE OF TEXAS)

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 OER Grant Program 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 required by law, 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.

Minimum Required Amounts of Insurance Coverage	
Type of Insurance	Each Occurrence/Aggregate
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@highered.texas.gov](mailto:Contracts@highered.texas.gov) 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@highered.texas.gov](mailto:Contracts@highered.texas.gov) 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 institution of higher education, 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. Course – At least one section with a dedicated course number. Multiple sections of a course with the same title and course number count as one course, regardless of delivery method. Courses eligible for the OER program include courses as defined in Section 3.2 of this RFA.
5. Full Course Curricula – All course material used by faculty and students for effective teaching and learning of the course learning outcomes. This includes but is not limited to ancillary and supplemental materials such as syllabi, lesson plans, lecture notes, assessments, assignments, readings, presentations, videos, simulations, labs, and solution manuals.
6. Institution of Higher Education – Any public technical institute, public junior college, public senior college or university, or medical or dental unit, public state college, or other agency of higher education.
7. Lower Division Course – Course offerings at a level of comprehension usually associated with freshman and sophomore students.
8. 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.
9. Open Educational Resource - a teaching, learning, or research resource that is in the public domain or has been released under an intellectual property license that permits the free use, adaptation, and redistribution of the resource by any person. The term may include full course curricula, course materials, modules, textbooks, media, assessments, software, and any other tools, materials, or techniques, whether digital or otherwise, used to support access to knowledge (TEC, Section 51.451).
10. State Fiscal Year – The period of time beginning September 1 and ending on the following August 31, both dates inclusive.
11. 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.
12. THECB – The Texas Higher Education Coordinating Board, an agency of the State of Texas.

Upper Division Course – Course offerings at a level of comprehension usually associated with junior and senior students.

## APPENDIX B: CALENDAR OF EVENTS

January 2023	Request for Applications Published
February 8, 2023	Inquiry Deadline
February 10, 2023	Application Deadline
March 2023	THECB Announces Grant Awards
March 2023	Execution of Grant Contracts Begins
Upon execution of NOGA	Grant Period Begins
September 29, 2023	First Deliverables Due to THECB; First Payment (50%)
December 31, 2023	First Project Report is Due to THECB. Second Payment at the End of the First Term the Course is Taught using OER (50%)
December 31, 2024	Second Project Report is Due to THECB
August 31, 2025	Grant Period Ends
September 16, 2025	Final Project Report Due to THECB

\*Grant Period begins upon execution of Notice of Grant Award.

## APPENDIX C: APPLICATION EVALUATION FORM

OER Grant Program Evaluation Form	Project #	Reviewer #
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<i>Proposal Scoring</i>	Max. Points	Actual Points
<p><b>Project design</b></p> <ul style="list-style-type: none"> <li>• The project is well defined and grounded in principles of effective instructional design. [10]</li> <li>• The project can be completed within the Grant Period, exclusive of teaching requirements. [5]</li> <li>• The proposed project is realistic and appropriate to the goals identified by the Applicant. [10]</li> <li>• The proposed activities and strategies are appropriate and are described in sufficient detail. [10]</li> <li>• Project activities would likely continue after the Grant Period ends. [5]</li> <li>• The proposed project includes the projected amount of money saved due to the use of OER in the course. [5]</li> </ul>	45	
<p><b>Project goals</b></p> <ul style="list-style-type: none"> <li>• Project goals align with the overall goals of the RFA to adopt, modify, redesign, or develop courses that use only open educational resources (OER). [5]</li> <li>• The course materials proposed are of sufficient quality to enhance course curricula, including student learning outcomes/objectives aligned to the OER as well as to assessments. [15]</li> <li>• The project plan proposed includes a description for how course materials will be peer reviewed. [10]</li> <li>• The course materials are provided to the student at no cost, other than the cost of printing. [0]</li> </ul>	30	



Open Educational Resources Grant Program

<p>Evaluation and expected outcomes</p> <ul style="list-style-type: none"> <li>• The proposed project evaluation for determining the success of the project is described in sufficient detail and includes relevant information/data to be collected. [10]</li> <li>• The expected outcomes are realistic. [10]</li> <li>• The expected outcomes would make a significant impact on reducing the cost of educational resources in the course(s). [20]</li> <li>• The expected outcomes would have an overall positive or neutral impact on student performance in terms of grades and drop/withdraw rates. [5]</li> <li>• There are sufficient staffing and resources to ensure that project evaluation information/data will be properly collected and reported. [5]</li> <li>• There are sufficient staffing and resources to support the creation or adaption of OER to ensure open licensing and accessibility requirements are met. [5]</li> </ul>	<p>55</p>	
<p>Priority Projects as Defined in 7.2</p> <ul style="list-style-type: none"> <li>• Proposed project incorporates student participation in the creation, adaptation, and/or evaluation of the resources</li> </ul> <p>For Development Grants only:</p> <ul style="list-style-type: none"> <li>• Project proposes to develop full course curricula.</li> <li>• Project proposes to develop materials for the following courses in the Academic Course Guide Manual PSYC 2314, BIOL 2420/2320+2120, BIOL 1322/HECO 1322, ENGL 2311, CHEM 1405/1305+1105, SOCI 2319, or HUMA 2319.</li> <li>• Project proposes cross-institutional collaboration (i.e., two-year institution with a four-year institution).</li> </ul>	<p>5</p> <p>5</p> <p>5</p> <p>5</p>	
<p style="text-align: right;">TOTAL POINTS</p>	<p>135/150</p>	

## APPENDIX D: CHECKLIST OF REQUIRED FORMS AND ATTACHMENTS

Required Information (RFA Section)	Application Form / Attachment
CERTIFICATION OF APPLICATION INFORMATION (8.1)	Form 1 – Certification
PROJECT NARRATIVE (8.2)	Form 2 – Project Narrative
PROJECT WORK PLAN (8.3)	Form 3 – Project Work Plan
PROJECT BUDGET (8.5)	Form 4 – Project Budget
FINANCIAL VIABILITY (8.6)	Not required
ATTACHMENTS	Performance Measures and Outcomes

## APPENDIX E: SAMPLE NOTICE OF GRANT AWARD

 <p><b>Texas Higher Education COORDINATING BOARD</b></p>	THECB Award Number: {XXXX} Appropriation Year (AY): 2023-2024					
<h3 style="margin: 0;">Notice of State Grant Award</h3> <p style="margin: 0;">to</p> <h3 style="margin: 0;">{contracted_party}</h3>						
Grantee Name and Address:  {contracted_party} {contractedPartyAddress} {contractedPartyCity}, {contractedPartyState} {contractedPartyZip}	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Grant Title: Open Educational Resources Grant Program</td> </tr> <tr> <td style="padding: 2px;">Amount of Award: TBD</td> </tr> <tr> <td style="padding: 2px;">Division: 029 Open Educational Resources</td> </tr> <tr> <td style="padding: 2px;">Term of Grant: Upon Execution to August 31, 2025</td> </tr> <tr> <td style="padding: 2px;">Payment Method: - Two payments of 50 percent each payable upon receipt and approval by THECB staff of deliverables as detailed in the RFA. All funds will be disbursed using AY 2023 funds.</td> </tr> </table>	Grant Title: Open Educational Resources Grant Program	Amount of Award: TBD	Division: 029 Open Educational Resources	Term of Grant: Upon Execution to August 31, 2025	Payment Method: - Two payments of 50 percent each payable upon receipt and approval by THECB staff of deliverables as detailed in the RFA. All funds will be disbursed using AY 2023 funds.
Grant Title: Open Educational Resources Grant Program						
Amount of Award: TBD						
Division: 029 Open Educational Resources						
Term of Grant: Upon Execution to August 31, 2025						
Payment Method: - Two payments of 50 percent each payable upon receipt and approval by THECB staff of deliverables as detailed in the RFA. All funds will be disbursed using AY 2023 funds.						
<p>Authority: The authority for the OER Grant Program is found in the General Appropriations Act, Senate Bill (S.B.) 1, Article III, Section 49, 87th Legislative Session Regular Session.</p> <p>THECB’s implementing regulations are found in Texas Administrative Code (TAC) Title 19, Part I, Section 4.230 through 4.238.</p>						
<p>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.</p> <p>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.</p>						
Signed by THECB Official:	Signed by Grantee Official:					

Open Educational Resources Grant Program

{signContact} {signContacttitle}	{signed_by2} {signed_bytitle}
Date:	Date: