

ATTACHMENT C – ANTICIPATED CONTRACT

RFO No. 781-2-25867

<p>Federal Grant Title: U.S. Department of Education, Education Stabilization Fund Program Governor’s Emergency Education Relief (GEER) Fund CFDA: 84.425 Federal Award Date: 6/02/2020 Federal Award No.: 2020-GE-84425C Authority: Section 18002 of Division B of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136</p>
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THECB Contract No.: _____

STANDARD SERVICES CONTRACT

Section 1.0 Parties

This agreement (Contract) is entered into by and between the TEXAS HIGHER EDUCATION COORDINATING BOARD, an agency of the state of Texas, hereinafter designated “THECB” and [Contracted Party], hereinafter designated “Contractor” or “Contracted Party.” At times, THECB and Contractor are referred to singularly as “Party” and collectively as “Parties.”

Receiving Agency: Texas Higher Education Coordinating Board
1200 East Anderson Lane
Austin, Texas 78752

Contractor: [Contracted Party]
[Contracted Party Address]
[City, State Zip Code]

Section 2.0 Term of Contract

THECB shall pay Contractor for the reasonable and approved costs incurred by Contractor in connection with the Contract during the period beginning upon execution and ending on [Month, Day, Year] unless extended or terminated as otherwise provided for in this Contract (Contract Term). Subject to proper approvals, the Parties may amend the Contract to extend the Contract Term, provided both Parties agree in writing to do so, prior to the expiration date. Any extensions shall have the same terms and conditions, plus any approved changes.

Section 3.0 Purpose and Statement of Services to be Performed

3.01 [Enter Purpose/Description]

3.02 Statement of Work

[Enter the Statement of Work, including budget information, payment requirements, reporting requirements, and monitoring language.]

Section 4.0 THECB Maximum Liability Under the Contract and Payment

4.01 THECB total liability under the Contract shall not exceed the sum of \$[enter dollar amount] (Contract Amount). This maximum liability includes, any pre-authorized expenses incurred. Any changes to the maximum liability are subject to proper approvals.

4.02 Contractor shall provide invoices to THECB for services performed. No payment shall be made under this Contract without the prior submission of detailed, correct invoices, accepted by THECB. All payments due to Contractor will be made pursuant to the Texas Prompt Payment Law, Texas Government Code §§ 2251.001-.055. The form of any invoice must comply with the specifications of THECB and must be submitted in the manner and with the documentation THECB may require. All invoices (which are to include reimbursement claims for expenses if authorized under this Contract) shall be submitted to THECB Program Manager, or THECB Program Manager's successor, who is listed in this Contract. Payments under this Contract are subject to the availability of appropriated funds. Submission of an invoice shall constitute Contractor's certification that services and other obligations under the Contract have been performed in accordance with this Contract.

4.03 To receive payment, Contractor must submit an invoice to accountspayable@highered.texas.gov and the designated THECB Contract manager(s). The invoice must include the following minimum information:

1. Contractor's mailing and e-mail (if applicable) address;
2. Contractor's telephone number;
3. The name and telephone number of a person designated by Contractor to answer questions regarding the invoice;
4. THECB's name, agency number (781), and delivery address;
5. The THECB purchase order number, if applicable;
6. The contract number or other reference number, if applicable;
7. A valid Texas identification number (TIN) issued by the comptroller;
8. A description of the goods or services, in sufficient detail to identify the order which relates to the invoice;

9. The unit numbers corresponding to the amount of the invoice;
10. If submitting an invoice after receiving an assignment of a contract, the TIN of the original contractor and the TIN of the successor vendor; and
11. Other relevant information supporting and explaining the payment requested.

4.04 The Texas Comptroller of Public Accounts uses an electronic funds transfer system to make payments to vendors who choose to receive payment through the electronic funds transfer system, rather than by state warrant. If not already established to receive direct deposit payments from the state of Texas, vendors who choose to receive payment by electronic funds transfer should complete and submit the Vendor Direct Deposit Authorization located on the Comptroller's website.

Section 5.0 General and Special Provisions of Contract, Certain Certifications

5.01 Contractor further certifies the following:

- 5.01.1** *Former Agency Employees.* Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of THECB during the twelve (12) month period immediately prior to the date of execution of the Contract.
- 5.01.2** *Prior Disaster Relief Contract Violation.* Under Texas Government Code §§ 2155.006 and 2261.053, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 5.01.3** *Disclosure of Potential Conflicts of Interest.* Pursuant to Texas Government Code § 2261.252, a state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest: (1) a member of the agency's governing body; (2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or (3) a family member related to an employee or official described above in (1) or (2) within the second degree of affinity or consanguinity.
- 5.01.4** *Executive Head of a State Agency.* In accordance with Texas Government Code § 669.003, relating to contracting with the

executive head of a state agency, Contractor certifies that it/he/she is not (a) the executive head of THECB, (b) a person who at any time during the four years before the date of the contract was the executive head of THECB, or (c) a person who employs a current or former executive head of THECB.

- 5.01.5** *Disclosure of Interested Parties.* Pursuant to Texas Government Code § 2252.908, Contractor agrees to submit a disclosure of interested parties to THECB at the time Contractor submits the signed Contract to THECB. This section applies only to a contract of a governmental entity or state agency that either (a) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (b) has a value of at least \$1 million.
- 5.01.6** *Felony Criminal Convictions.* Contractor represents and warrants that Contractor has not and Contractor's employees who will be involved in the Contract Project have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised THECB as to the facts and circumstances surrounding the conviction(s) and has received THECB's prior written consent to proceed.
- 5.01.7** *Certification Concerning Restricted Employment for Former State Officers or Employees under Texas Government Code § 572.069.* Pursuant to Texas Government Code § 572.069, Contractor certifies that is has not employed and will not employ a former THECB employee or state officer who participated in a procurement or contract negotiation for THECB involving Contractor within two years of the date the Contract is signed or the procurement is terminated or withdrawn.
- 5.01.8** *Franchise Tax Certification.* Contractor certifies that it is exempt or not delinquent in the payment of any franchise taxes owed the state of Texas under Texas Tax Code §§ 171.0001-.909. If Contractor is a qualifying business entity type per Texas Comptroller of Public Accounts guidelines and is not set up in the Texas Franchise system, Contractor must do so prior to contracting with the state of Texas.
- 5.01.9** *Certification Concerning Dealing with Public Servants.* Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

- 5.01.10** *Certification Concerning Financial Participation.* Texas Government Code § 2155.004 prohibits a person or entity from receiving a state contract if that person or entity received compensation for participating in preparing the solicitation or specification for the contract. “Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.” Tex. Gov’t Code § 2155.004.
- 5.01.12** *Critical Infrastructure Affirmation.* Pursuant to Government Code § 2274.0102, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor or its parent company, is: (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Government Code § 2274.0103, or (2) headquartered in any of those countries.
- 5.01.13** *Energy Company Boycotts.* Contractor represents and warrants that: (1) it does not, and will not for the duration of the contract, boycott energy companies or (2) the verification required by Texas Government Code § 2274.002 does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Contractor shall promptly notify THECB.
- 5.01.14** *Firearm Entities and Trade Association Discrimination.* Contractor verifies that: (1) it does not, and will not for the duration of the contract, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Texas Government Code § 2274.002 does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Contractor shall promptly notify THECB.
- 5.01.15** *National Anthem Verification.* To the extent applicable, Contractor will play the United States national anthem at the beginning of each team sporting event held at the Contractor’s home venue or other venue controlled by Contractor for the event. Failure to comply with this obligation constitutes a default of this contract, and immediately subjects Contractor to the penalties for default, such as repayment of money received or ineligibility for additional money. In addition, Contractor may be debarred from contracting with the state. THECB or the Attorney General may strictly enforce this provision.

- 5.01.16** *Cloud Computing Services.* To the extent applicable, Contractor represents and warrants that it has demonstrated compliance with the requirements of the Cloud Computing State Risk and Authorization Management Program found in Texas Government Code § 2054.0593. To the extent applicable, Contractor agrees to maintain program compliance and certification throughout the term of this Contract.
- 5.01.17** *Signature Authority.* Contractor represents and warrants that the individual submitting this document, and any other documents made part of this Contract, is authorized to sign such documents on behalf of the Contractor.

Section 6.0 Terms and Conditions

6.01 **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, and default shall survive the termination or expiration dates of this Contract.

6.01.1 *Convenience of the State.* THECB, in its sole discretion, may terminate this Contract upon one (1) calendar day's written notice to Contractor. Such notice will be provided in accordance with section 6.28.2 of this Contract. In the event of such termination, Contractor 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 goods and/or services ordered from Contractor before the termination date.

6.01.2 *Termination for Cause.* THECB may, by written notice to Contractor, immediately terminate this Contract for cause if: (a) THECB is not reasonably satisfied with Contractor's services; (b) default or abandonment by Contractor occurs; or (c) Contractor fails to comply fully with any term or condition of this Contract, 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 Contractor, and THECB will provide Contractor with an opportunity for consultation with THECB prior to termination during that three (3) business day period.

If Contractor fails or refuses to perform its obligations under this Contract, 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, Contractor 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 Contractor's non-performance.

- 6.01.3** *Abandonment or Default.* If Contractor Abandons or Defaults on the Contract, THECB reserves the right to terminate the Contract without notice and either re-solicit or re-award the Contract to the next best responsive and responsible Contractor. The defaulting Contractor 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.
- 6.01.4** *Applicable Law and Conforming Amendments.* THECB may terminate this Contract immediately upon notice to Contractor in the event federal or state law is enacted, amended, or judicially interpreted so as to render continued fulfillment of the Contract, on the part of THECB, wholly unreasonable or impossible. THECB reserves the right, at its sole discretion, to unilaterally amend this Contract throughout the Contract 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.
- 6.01.5** *Excess Obligations.* The contract is subject to termination or cancellation, without penalty to THECB, either in whole or in part, subject to the availability of funds.
- 6.01.6** *Effect of Termination.* Upon any termination, all indemnities, including without limitation those set forth in this Contract, as well as Contract provisions regarding confidentiality, records retention, right to audit, ownership, and dispute resolution, shall survive the termination of this Contract for any reason whatsoever and shall remain in full force and effect. In the event of any termination, Contractor 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 Contractor 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 Contract requirements, plus any necessary work deemed appropriate by THECB to cost-effectively wind-up.

6.01.7 *Transfer of Duties.* In the event of termination, Contractor will provide reasonable cooperation to transfer its duties under the Contract to another entity without disruption.

6.02 **Amendment:** This Contract may be modified only by written amendment executed by the Parties hereto; however, any amendment of this Contract that conflicts with the laws of the state of Texas shall be void ab initio.

6.03 **Indemnification:** Acts or Omissions: CONTRACTOR 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 CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL 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 CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

6.04 **Sovereign Immunity:** The Parties stipulate and agree that no provision of, or any part of this Contract between THECB and Contractor, or any subsequent amendment shall be construed: (a) 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; (b) to extend liability to THECB beyond such liability provided for in the Texas Constitution and the laws of the state of Texas; or (c) as a waiver of any immunity provided by the Eleventh 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 this Contract and specifically retain such immunity and all defenses available to them under the laws of the state of Texas or the common law.

- 6.05 Assignment:** Contractor shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from THECB. Any attempted assignment in violation of this provision is void and without effect.
- 6.06 Delegation or Subcontracting:** Unless as otherwise provided for in this Contract, no contractual rights, interest, or obligation shall be delegated or subcontracted by Contractor without prior written approval of THECB. No delegation or subcontract approved by THECB shall relieve Contractor of any obligation or responsibility under this Contract. It is the Parties' intent that to the extent subcontracting is approved by THECB, Contractor shall make a good faith effort to subcontract with Historically Underutilized Businesses (HUB) as defined in Texas Government Code § 2161.001(2) during the performance of this Contract. The goal of the HUB program is to promote full and equal business opportunities for all businesses contracting with the state of Texas.
- 6.07 Right to Audit; Records Retention:** Contractor understands that acceptance of funds under this Contract, or indirectly through a subcontract under this Contract, 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 contracts 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. Contractor further agrees to cooperate fully with the above parties in the conduct of an audit or investigation, including promptly providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirements to cooperate is included in any subcontract it awards.
- 6.07.1** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract Project. These records and accounts (which includes all receipts of expenses incurred by Contractor) shall be retained by Contractor 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 Contract or the date of receipt by THECB of Contractor'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. Contractor 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 Contract. Contractor and any subcontractors shall provide any Audit Entities with any information such entity deems relevant to any monitoring, investigation, evaluation, or audit.

6.07.2 Contractor's failure to comply with this subsection (Right to Audit; Records Retention) shall constitute a material breach of this Contract 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 Contract. Contractor shall reimburse THECB for any over-payments within thirty (30) calendar days of receipt of THECB's written notice.

6.07.3 *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 contract or indirectly through a subcontract under the contract. The acceptance of funds directly under the contract or indirectly through a subcontract under the contract 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.

6.08 **Child Support Obligation Family Code Applicability:** By signing this Contract, Contractor certifies that under Texas Family Code § 231.006, Contractor is not ineligible to receive payment under this Contract and acknowledges that this Contract may be terminated and payment may be withheld or recouped if this certification is inaccurate. If this certification is shown to be false, Contractor is liable to THECB for attorneys' fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or Contract. Under Texas Family Code § 231.006, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

- 6.09 Dispute Resolution:** If THECB determines that any work product is not acceptable, THECB shall notify Contractor of the specific deficiencies in writing. Contractor 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 §§ 2260.001-.108 shall be used by THECB and Contractor to attempt to resolve any claim for breach of Contract. The dispute resolution process provided for in Texas Government Code § 2260.001-.108 must be used to attempt to resolve any dispute arising under the contract.
- 6.10 Public Disclosure:** Contractor understands and agrees that no public disclosures or news releases pertaining to this Contract, including any results, findings or reports conducted to fulfill requirements of this Contract, shall be made without prior written approval of THECB.
- 6.11 Confidentiality, Public Information Act, and Family Educational Rights and Privacy Act:** Notwithstanding any provisions of this Contract to the contrary, Contractor understands that as a Texas state agency, THECB is subject to and will comply with the Texas Public Information Act, Government Code §§ 552.001-.376, as interpreted by judicial opinions and opinions of the Attorney General of Texas. Contractor 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.
- 6.11.1** THECB will determine whether to submit a Public Information Act request to the Office of the Attorney General. This Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor will notify THECB's contact within twenty-four (24) hours of receipt of any third-party requests for information it receives relating to this Contract. In accordance with Texas Government Code § 2252.907, Contractor is required to make any information created or exchanged with THECB pursuant to this Contract, 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. Contractor agrees to maintain the confidentiality of information received from THECB and the state of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Contractor will not disclose any information to which it is privy under this Contract without the prior written consent of THECB. Contractor will indemnify and hold harmless the state of Texas, its officers, and its employees, and THECB, its officers, and its employees

for any claims for damages that arise from the disclosure by Contractor of information also held by the state of Texas or THECB to which Contractor is privy under this Contract.

- 6.11.2** Contractor agrees to comply with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g, and the implementing federal regulations, 34 C.F.R. Part 99.
- 6.11.3** *Protection of Confidential Data (Covered Data and Information).* Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in FERPA (34 C.F.R. § 99.33(a)(2)) and with the terms set forth below in Sections 6.11.4–6.11.10 below. FERPA, 34 C.F.R. 99.33(a)(2), states that the officers, employees, and agents of a party that receives education record information from THECB may use the information, but only for the purposes for which the disclosure was made.
- 6.11.4** *Acknowledgment of Access to Covered Data and Information (CDI).* Contractor acknowledges that the Contract allows Contractor access to CDI.
- 6.11.5** *Prohibition on Unauthorized Use or Disclosure of CDI.* Contractor agrees to hold CDI in strict confidence. Contractor shall not use or disclose CDI received from or on behalf of THECB except as permitted or required by the Contract, as required by law, or as otherwise authorized in writing by THECB. Contractor agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.
- 6.11.6** *Return or Destruction of CDI.* Upon termination, cancellation, expiration or other conclusion of the Contract, Contractor shall return all CDI to THECB or, if return is not feasible, destroy all CDI. If Contractor destroys the information, Contractor shall provide THECB with a certificate confirming the date of destruction of the data.
- 6.11.7** *Breach.* Any violation of these FERPA provisions by Contractor shall be deemed a material breach of the Contract.
- 6.11.8** *Maintenance of the Security of Electronic Information.* Contractor 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 Contractor.

6.11.9 *Security Controls for Agency Data.* Pursuant to Texas Government Code Section 2054.138, to the extent that Contractor is authorized to access, transmit, use, or store THECB data, Contractor agrees to meet all security controls that THECB determines are proportionate with THECB's risk under the contract based on the sensitivity of the THECB data.

6.11.10 *Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information.* Contractor shall, within one hour of discovery, report to THECB any use or disclosure of CDI not authorized by this Contract or in writing by THECB. Contractor's report shall identify: (a) the nature of the unauthorized use or disclosure, (b) the CDI used or disclosed, (c) who made the unauthorized use and who received the unauthorized disclosure, (d) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as requested by THECB.

6.12 **Infringements:** CONTRACTOR 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, TRADEMARKS, SERVICE MARKS, AND OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL 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 CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

6.12.1 Contractor shall have no liability under this section if the alleged infringement is caused in whole or in significant part by: (a) THECB's

use of the product or service for a purpose or in a manner for which the product or service was not designed, (b) any modification made to the product by THECB without Contractor's approval, (c) any modifications made to the product by Contractor pursuant to THECB's specific instructions, (d) any intellectual property right owned by or licensed to THECB by a person or entity other than Contractor, or (e) any use of the product or service by THECB that is not in substantial conformity with the terms of any applicable license agreement.

6.12.2 If Contractor becomes aware of an actual or potential claim, or THECB provides Contractor with notice of an actual or potential claim, Contractor may (or in the case of an injunction against THECB, shall), at Contractor's sole option and expense: (a) procure for THECB the right to continue to use the affected portion of the product or service, or (b) 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.

6.13 **Ownership/Work Made for Hire:** All work product generated as a result of this Contract Project, including but not limited to all information, materials, products, research, reports, studies, statistical analyses, work papers, approaches, designs, deliverables, systems, documentation, methodologies, concepts, research materials, data, photos, software, intellectual property or other property produced or generated in connection with this Contract that had not previously been produced or generated by Contractor, either completed or partially completed, shall be the sole property of THECB and all rights, title, and interest in and to the work product shall vest in THECB upon payment for the Services.

6.13.1 All such work product shall be delivered to THECB by Contractor upon completion, termination, or cancellation of this Contract. All property rights, including publication rights, hereunder shall be retained by THECB, and Contractor shall assert no right in law or equity to such work product. THECB shall have the right to obtain and to hold in its own name any and all patents, copyrights, marks, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof.

6.13.2 Contractor shall ensure that this provision, "Ownership/Work Made for Hire," is contained in any subcontract Contractor is authorized by THECB to award. Contractor may, at its own expense, keep copies of all its materials for its personal files. Contractor shall not use, willingly allow, or cause to have such work product used for any purpose other than the performance of Contractor's obligations under this Contract without the prior written consent of THECB; provided, however, that

Contractor shall be allowed to use non-confidential materials for writing samples in pursuit of work.

- 6.14 Governing Law and Venue:** The contract 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 THECB.
- 6.15 Additional Contractor Responsibilities:** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and the orders and decrees of any court, administrative body, or tribunal in any matter affecting the performance of this Contract, including applicable workers' compensation laws, compensation statutes and regulations, and licensing laws and regulations. When requested to do so by THECB, Contractor shall furnish THECB with satisfactory proof of its compliance. Contractor 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. Contractor shall be responsible and liable for the safety and health of its employees and contractors while they are performing work for THECB under this Contract. Contractor shall provide all labor and equipment necessary to furnish the goods or perform the Services. All employees of Contractor shall be a minimum of 18 years of age and experienced in the type of work to be performed. Contractor shall permit no visitors or relatives of Contractor's employees and contractors on THECB's property unless they also are bona fide employees or subcontractors of Contractor.
- 6.16 Conflict of Interest:** Contractor represents and warrants that Contractor, its principals, employees, or subcontractors have no potential conflict of interest in providing Services to THECB under this Contract, and that the provision of Services under this Contract does not create an appearance of impropriety. Failure to disclose a conflict of interest, at any time during the duration of this Contract, shall be cause for termination of this Contract. Contractor represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.
- 6.17 Financial Interests; Gifts:** Contractor represents and warrants that neither Contractor nor any person or entity that will participate financially in this Contract has received compensation from THECB or any agency of the state of Texas for participation in preparation of specifications for this Contract.

- 6.18 Additional Contractor's Representations:** Contractor hereby covenants, represents, and warrants that Contractor (including, for purposes of this section, its employees, consultants, subcontractors, and agents): (a) has the technical expertise and general skills necessary to perform competently and professionally the services in accordance with this Contract; (b) is not a party to or bound by any agreement, obligation, or understanding which restricts or limits in any way Contractor's right to enter into this Contract or Contractor's right or ability to perform Contractor's obligations under this Contract; (c) shall not use the trade secrets, intellectual property rights, copyrights, or other proprietary rights of any third party in the performance of Contractor's obligations under this Contract without having first lawfully obtained the right, in writing, to do so; and (d) has the necessary equipment, facilities, and workers to perform Contractor's obligations under this Contract. To the extent that this Contract involves architectural or engineering services, Contractor represents and warrants that, pursuant to Texas Government Code § 2254.0031, Contractor shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.
- 6.19 Antitrust:** The undersigned affirms under penalty of perjury of the laws of the state of Texas that: "(1) in connection with this Contract, neither I nor any representative of the Contracted Party have violated any provision of the Texas Free Enterprise and Antitrust Act, Texas Business and Commerce Code §§ 15.01-.52; (2) in connection with this Contract, neither I nor any representative of the Contracted Party have violated any federal antitrust law; and (3) neither I nor any representative of the Contracted Party have directly or indirectly communicated any of the contents of this Contract to a competitor of the Contracted Party or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contracted Party."
- 6.20 Equal Opportunity:** Contractor 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 Contract.
- 6.21 Independent Contractor:** Contractor shall be an independent contractor in all matters relating to this Contract. Contractor and its employees, agents, and subcontractors shall not be deemed or construed to be the employees or agents of THECB for any purposes whatsoever. Contractor agrees and acknowledges that Contractor, its employees and

agents, and Contractor'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 Contractor 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, Contractor 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, Contractor shall have the sole authority to hire, fire, transfer, train, evaluate, discipline, pay and assign work.

6.21.1 Contractor agrees and acknowledges that Contractor and Contractor'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, Contractor shall promptly pay or reimburse THECB or the state of Texas for such liability or obligation.

6.22 Eligibility/Authorization to Work in the United States: Contractor shall ensure that all personnel provided to perform work under this Contract 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. Contractor shall maintain written records on all personnel provided under the Contract and shall provide such records to THECB upon request. Failure to maintain and provide records upon request shall represent a material breach of this Contract and THECB shall have the right to terminate the Contract for cause. Contractor shall ensure this section is included in all subcontracts it is authorized by THECB to enter.

6.23 Taxes/ Workers' Compensation/Unemployment Insurance, Including Indemnity:

6.23.1 CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCE OF THIS CONTRACT. CONTRACTOR 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 CONTRACTOR, 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.

6.23.2 CONTRACTOR 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 CONTRACT. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE THE ATTORNEY GENERAL 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 CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS. CONTRACTOR AND THECB AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

6.24 **Prohibition on Use of Funds for Lobbying:** Contractor represents and warrants that THECB's payments and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Texas Government Code §§ 556.005, 556.0055, or 556.008.

In addition, Contractor must complete the Certification Regarding Disclosure of Lobbying Activities (Attachment A) prior to execution of this Contract.

6.25 **Buy Texas:** In accordance with Texas Government Code § 2155.441, Contractor agrees that during the performance of a contract 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.

6.26 Provision of Services: Upon any request by THECB for the remittance of any services for which THECB has made payment, Contractor shall immediately remit such services to THECB. Any failure to remit such services immediately shall be considered a material breach of this Contract.

6.27 Force Majeure: THECB may grant relief from performance of this Contract if Contractor 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 Contractor. The burden of proof for the need of such relief shall rest upon Contractor. Contractor 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.

6.28 Notice:

6.28.1 Form of Notice. All notices and other communications in connection with this Contract shall be in writing.

6.28.2 Method of Notice. All notices must be given by (a) personal delivery, (b) express courier (with confirmation), (c) registered or certified mail (return receipt requested), (d) facsimile, or (e) electronic mail to the Party at the address specified in this Contract, or to the address that a Party has notified to be that Party's address for the purposes of this section.

6.28.3 Receipt of Notice. A notice in accordance with this Contract 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.

THECB Notice Address	Contractor's Notice Address
Program Manager	[Contracted Party]
[Insert Contact Information]	[Insert Contact Information]

6.29 False Statements; Breach of Representations: Contractor represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a false statement or material misrepresentations made during the performance of this Contract is a material breach of Contract and may void the Contract.

- 6.30 Severability and Waiver:** The invalidity, illegality, or unenforceability of any provision of this Contract shall in no way affect the validity, legality, or enforceability of any other provisions.
- 6.30.1** 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 Contractor 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 Contract shall be construed to operate as a waiver of any rights under the Contract, or of any cause of action arising out of the performance of the Services required by the Contract.
- 6.31 Boycotting Israel:** *(Only applicable to contracts with companies with ten or more full-time employees that are valued at \$100,000 and above.)* Pursuant to Texas Government Code §§ 2271.001 and 2271.002, Contractor certifies that it does not boycott Israel and will not boycott Israel during the Contract Term.
- 6.32 Human Trafficking Prohibition:** Under Texas Government Code § 2155.0061, Contractor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 6.33 Foreign Terrorist Organizations:** Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code § 2252.152.
- 6.34 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. Contractor certifies that Contractor is in compliance with the state of Texas statutes and rules relating to procurement and that Contractor 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>.
- 6.35 Notification of Contract:** *(Only applies to Employees of a Texas state agency or any public or private institution of higher education.)* THECB

will send notification to Contractor’s employer if Contractor is otherwise employed outside of their contracted work with THECB.

6.36 Insurance: Contractor agrees to maintain at its expense insurance as required for the work being performed under this Contract. 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 Contractor’s obligations under the Contract. Contractor 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:

6.36.1 Contractor must maintain Workers’ Compensation insurance coverage in accordance with statutory limits.

Minimum Required Amounts of Insurance Coverage	
Type of Insurance	Each Occurrence/Aggregate
<i>Workers’ Compensation</i>	Statutory Limits
<i>Employer’s Liability</i> Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$1,000,000 Each Accident \$1,000,000 Each Employee \$1,000,000 Policy Limit
<i>Commercial General Liability</i> (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
<i>Automobile Liability</i> All Owned, Hired and Non- Owned Vehicles	\$500,000 Combined Single Limit (for each accident)
<i>Umbrella/Excess Liability</i>	\$1,000,000 Per Occurrence

Note: The required insurance coverage must issue from a company or companies that have both: (a) a Financial Strength Rating of “A” or better from A.M. Best Company, Inc.; and (b) a Financial Size Category Class of “VII” or better from A.M. Best Company, Inc.

6.36.2 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: (a) be written on a primary and non-contributory basis

with any other insurance coverages Contractor currently has in place; and (b) 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.

Contractor shall:

- a) Provide written notice to THECB by e-mail at Contracts@higered.texas.gov and by U.S. First Class Mail to 1200 E. Anderson Lane, Austin Texas 78752 at least thirty (30) calendar days prior to any cancellation, non-renewal, or material change of a required policy;
- b) Ensure all insurance policies and certificates of insurance for required coverage are written to include all products, services, and locations related to Contractor's performance under the Contract; and
- c) Deliver to THECB by e-mail at Contracts@higered.texas.gov and by U.S. First Class Mail to 1200 E. Anderson Lane, Austin Texas 78752 all renewal policies at least ten (10) 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 Contract.

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

- 6.37 Key Personnel:** Contractor shall assign only qualified personnel to this Contract. Contractor, 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. Contractor 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 Contract. Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Contractor (*see* Section 6.05 "Assignment" and Section 6.06 "Delegation or Subcontracting" for additional conditions regarding subcontracts). No subcontract under this Contract shall relieve Contractor of responsibility for ensuring the required services are provided. THECB, in its sole discretion, may require Contractor to remove any

employee, contractor, subcontractor, or vendor of the Contractor from providing work or services under the Contract. Contractor shall replace such removed personnel expeditiously so that its services are performed on a timely basis.

- 6.38 Debts and Delinquencies to the State:** Contractor agrees that any payments due under the contract shall be applied towards any debt or delinquency that is owed to the state of Texas.
- 6.39 Deceptive Trade Practices; Unfair Business Practices:** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Texas Business and Commerce Code §§ 17.01-.955, 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 Contractor has not been found to be liable for any such practices in such proceedings. Contractor 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 officers have 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.
- 6.40 Suspension and Debarment:** Contractor certifies that it and its principals are not suspended or debarred from doing business with the state of Texas 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.
- 6.41 Excluded Parties:** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, *Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*, published by the United States Department of the Treasury, Office of Foreign Assets Control.
- 6.42 E-Verify:** U.S. Department of Homeland Security's E-Verify System
- 6.42.1** By entering into this Contract, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of all persons: (a) employed to perform duties within Texas, during the term of the Contract; and (b) (including subcontractors) assigned by the Contractor to perform work pursuant to the Contract, within the United States of America.

6.42.2 Contractor shall provide, upon request of THECB, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by Contractor, and Contractor's subcontractors, as proof that this provision is being followed.

6.42.3 If this certification is falsely made, the Contract may be immediately terminated, at the discretion of THECB or the state of Texas and at no fault to THECB or the state, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that THECB or the state of Texas must undertake to replace the terminated Contract.

6.43 **Drug-Free Workplace:** Contractor shall comply with the applicable provisions of the Drug-Free Workplace 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 workplace (grants), issued by the Office of Management and Budget and the Department of Defense (32 C.F.R. Part 26) to implement the provisions of the Drug-Free Workplace Act of 1988 is incorporated by reference and Contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

6.44 **No Commissions:** THECB shall not pay any commissions to Contractor under this Contract.

6.45 **Contacts:** Unless otherwise agreed to in writing by the Parties, primary contacts for routine communications related to the performance of Services under this Contract are as follows:

THECB Staff	Contractor Staff
[Insert Contact Information]	[Insert Contact Information]

6.46 **Applicable Taxes:** This Contract 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. Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Contractor or its employees. To the extent permitted by applicable law, THECB shall provide all applicable tax exemption certificates upon Contractor's request.

6.47 **Electronic and Information Resources Accessibility Standards:**

- 6.47.1** 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 Title 1 Texas Administrative Code, Part 10, Chapter 213, when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 6.47.2** Vendor shall provide 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>). Vendors 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/>.
- 6.48** **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. Contractor, by acceptance of this Contract, agrees to abide by this policy when on the property of THECB.
- 6.49** **Substitutions:** Substitutions are not permitted without the written approval of THECB.
- 6.50** **Contracting Information Responsibilities:** (*Applicable for Contracts \$1 million and Above*) Contractor represents and warrants that it will comply with the requirements of Texas Government Code § 552.372(a). Except as provided by Texas Government Code § 552.374(c), the requirements of Texas Government Code §§ 552.371-.376 may apply to the Contract and Contractor agrees that the Contract can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 6.51** **Cybersecurity Training:** Contractor represents and warrants that it will comply with the requirements of Texas Government Code § 2054.5192

relating to cybersecurity training and required verification of completion of the training program.

6.52 Disaster Recovery Plan: Contractor shall provide the descriptions of its business continuity and disaster recovery plans to THECB upon request.

6.53 Entire Contract and Order of Precedence: This Contract consists of the following documents: the final executed Contract (including its Exhibits and any Amendments), THECB's Solicitation, and Contractor's response to the Solicitation.

6.53.1 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) Any duly executed amendments to the final executed contract;
- (2) The final executed contract, including its exhibits;
- (3) THECB's Solicitation;
- (4) Contractor's response to the Solicitation.

6.53.2 This Contract (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 Contract. The Parties further agree that this Contract 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 Contract or otherwise.

Section 7.0 Federal Terms and Conditions

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

Breach of Contract Terms. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such

sanctions and penalties as appropriate. Such terms can be found in section 6.01 of this Contract.

Termination Terms. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. Such terms can be found in section 6.0 and all subsections therein of this Contract.

Equal Employment Opportunity. [Only applies to “federally assisted construction contracts” in [41 C.F.R. Part 60-1.3](#).

Davis-Bacon Act. [Only applies to prime construction contracts in excess of \$2,000.00]. To the extent applicable, Contractor agrees to comply with the Davis-Bacon Act ([40 U.S.C. 3141-3144](#) and [3146-3148](#)) and the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)).

Contract Work Hours and Safety Standards Act. [Only applies to contracts in excess of \$100,000 that involve the employment of mechanics or laborers]. Contractor agrees to comply with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 C.F.R. Part 5](#)).

Rights to Inventions Made Under a Contract or Agreement. [Only applies to federal “funding agreements” under [37 C.F.R. § 401.2 \(a\)](#). To the extent applicable, Contractor agrees to comply with the requirements of [37 C.F.R. Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Clean Air Act and the Federal Water Pollution Control Act, as amended. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. §§ 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. §§ 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see [2 C.F.R. § 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 C.F.R. Part 180](#) that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235). Contractor has certified that it is not suspended or debarred from doing business with the federal government in section 6.40 of this Contract.

Byrd Anti-Lobbying Amendment. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a

member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. § 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Contractor certifies that it has filed the required certification, if applicable.

Miscellaneous. Contractor certifies that, to the extent applicable, it has complied and will comply with all other federal contracting requirements, including but not limited to the following:

- [2 C.F.R. § 200.323](#);
- [2 C.F.R. § 200.216](#); and
- [2 C.F.R. § 200.322](#).

([78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75888](#), Dec. 19, 2014; [85 FR 49577](#), Aug. 13, 2020.)

Section 8.0 Federal Forms, Assurances, Certifications, and Reports

Contractor shall timely file with the proper authorities all forms, assurances, and reports required by state and federal laws and regulations. If THECB becomes aware of any failure by Contractor to comply with the foregoing laws and regulations, THECB reserves the right to report the failure to the proper authorities and deny any reimbursements due under the Contract or recoup any payments already made by THECB to Contractor.

The following federal certifications must be completed prior to execution of this Contract:

1. Certification Regarding Disclosure of Lobbying Activities (Attachment A) and, if applicable, Disclosure of Lobbying (Attachment A1);
2. Certification Federal Funding Accountability and Transparency Act (FFATA) (Attachment B); and
3. Certification Regarding Debarment and Suspension (Attachment C).

Section 9.0 Signatures:

This Contract constitutes the entire agreement and understanding between the Parties with regard to its subject matter and supersedes and merges all prior discussions, writings, negotiations, understanding, and agreements concerning the provision of these services.

By signature hereon, the individual(s) below represent and warrant that they are duly authorized representative(s) of Contractor and have the authority to bind Contractor in this Contract.

[Contracted Party]

By: _____
Name: _____
Title: _____
Date: _____

I, an authorized representative of THECB, hereby certify that this Contract complies with applicable statutes and regulations and authorize the services to be performed as written above.

AGREED and accepted on behalf of the
Texas Higher Education Coordinating Board

By: _____
Name: _____
Title: _____
Date: _____