**AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR**

UTHealth Contract # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 This Agreement between University and Contractor ("**Agreement**") is made and entered into effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015 (the “**Effective Date**”), by and between **The University of Texas Health Science Center at Houston**, an agency and institution of higher education established under the laws of the State of Texas (“**University**”), and , a ("**Contractor**"), Federal Tax Identification Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 University and Contractor hereby agree as follows:

**1. Scope of Work.**

1.1 Contractor will perform the scope of the work ("**Work**”) set forth in **Exhibit A**, Scope of Work, attached and incorporated for all purposes, to the satisfaction of University and in accordance with the schedule (“**Schedule**”) for the Work set forth in **Exhibit B**, Schedule, attached and incorporated for all purposes. Time is of the essence in connection with this Agreement. University will have no obligation to accept late performance or waive timely performance by Contractor.

1.2 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local, laws, statutes, regulations and ordinances (“**Applicable Laws”**), for the performance of the Work.

1.3 **[Option (Include if Contractor has performed Work for University before this Agreement is signed.):** Upon execution of this Agreement, all services previously performed by Contractor on behalf of University and included in the description of the Work, will become a part of the Work and will be subject to the terms and conditions of this Agreement.**]**

**2. The Project.**

 The Work will be provided in connection with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and all other related, necessary and appropriate services (the “**Project**”).

**3.** **Time for Commencement and Completion**.

 The term (“**Initial Term**”) of this Agreement will begin on the Effective Date and expire on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_. University will have the option to renew this Agreement for \_\_\_\_\_\_\_ (\_\_\_) additional \_\_\_\_\_\_ (\_\_\_\_) year terms (each a “**Renewal Term**”). The Initial Term and each Renewal Term are collectively referred to as the “**Term**”).

**4. Contractor's Obligations**.

4.1 Contractor will perform the Work in compliance with (a) all Applicable Laws, and (b) the *Rules and Regulations* of the Board of Regents of The University of Texas System at <http://www.utsystem.edu/bor/rules/>,http://www.utsystem.edu/bor/rules.htm the policies of The University of Texas System at <http://www.utsystem.edu/bor/procedures/policy/>; and the institutional rules, regulations and policies of University at <http://www.uth.edu/hoop/index.htm> (collectively, “**University Rules**”). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas* *Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor’s response to University’s procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.

4.2 Contractor represents, warrants and agrees that (a) it will use its best efforts to perform the Work in a good and workmanlike manner and in accordance with the highest standards of Contractor’s profession or business, and (b) all of the Work to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.

4.3 Contractor will call to University’s attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.

4.4 Contractor warrants and agrees that the Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will at no time be in any way diminished by reason of any approval by University nor will Contractor be released from any liability by reason of any approval by University, it being agreed that University at all times is relying upon Contractor's skill and knowledge in performing the Work.

4.5 Contractor will, at its own cost, correct all material defects in the Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in the Work within a reasonable time, then University may correct the defective Work at Contractor’s expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.

4.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected with Contractor directly in charge of the Work to be duly registered and/or licensed under all Applicable Laws. Contractor will assign to the Project a designated representative who will be responsible for the administration and coordination of the Work. **[Option (Include if Contractor is paid on hourly fee basis.):** Contractor will furnish efficient business administration and coordination and perform the Work in an expeditious and economical manner consistent with the interests of University.**]**

4.7 Contractor represents that if (i) it is a corporation, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

4.8 Contractor represents and warrants that neither the execution and delivery of this Agreement by Contractor nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision [i] if a corporation, of Contractor’s articles of incorporation or by‑laws, [ii] if a limited liability company, of its articles of organization or regulations, or [iii] if a partnership, of any partnership agreement by which Contractor is bound; (b) result in the violation of any provision of any agreement by which Contractor is bound; or (c) to the best of Contractor's knowledge and belief, conflict with any order or decree of any court or other body or authority having jurisdiction.

4.9 **[Option (Include if Contractor will create software, training materials or other Work Material (ref. Section 7) protectable by copyright, trademark, patent or other intellectual property rights. Contact OGC with questions.):** Contractor represents and warrants that all of Contractor’s Personnel contributing to the Work Material (ref. **Section 7**) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of University) of the Work Material and each element thereof produced by the Personnel while performing services pursuant to this Agreement and (ii) make all assignments necessary to effectuate such ownership. “**Personnel**” means any and all persons associated with Contractor who provide any work or work product pursuant to this Agreement, including officers, managers, supervisors, full-time employees, part-time employees, and independent contractors.

4.10 Contractor represents and warrants that: (i) the Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor for the benefit of University; (ii) University will receive free, good and clear title to all Work Material developed under this Agreement; (iii) the Work Material and the intellectual property rights protecting the Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges or other restrictions; (iv) the Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of the Work Material will not violate the rights of any third parties in the Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.**]**

 **[Option (Premises Rules.):** 4.11 If this Agreement requires Contractor’s presence on University's premises or in University’s facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors to become aware of, fully informed about, and in full compliance with all applicable University Rules, including those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, and access restrictions.**]**

**[Option (Include only if Contractor performs Work at University and provides Work to University, and Contractor is not paid for with appropriated money. See Section 2252.061(1), *Texas Government Code*, for definition of “auxiliary enterprise.” Contact OGC with questions.):** 4.12 Contractor, at its sole cost and expense, will comply with all requirements of Subchapter C, Chapter 2252, *Texas Government Code*, including the provision of financial statements, payment statements derived from sales tax reports, and bonds.

4.12.1 In accordance with Section 2252.062, *Texas Government Code*, Contractor will submit to University two (2) copies of Contractor’s most recent financial statement prepared by a certified public accountant on the Effective Date.

4.12.2 In accordance with Section 2252.063, *Texas Government Code*, Contractor will submit to University, no later than the 15th day after the end of each contract year, an annual payment statement derived from all of Contractor’s sales tax reports for its operations during the preceding contract year. The annual payment statement must be certified by a certified public accountant licensed in the State of Texas. “**Contract year**” means that period of time beginning on the Effective Date and ending \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ **[Note: Insert date that is 12 months after Effective Date (i.e., if Effective Date is January 1, 2007, then insert December 31, 2007).]** and each twelve (12) month period thereafter, during the Term of this Agreement.

 4.12.3 In accordance with Section 2252.064, *Texas Government Code*, Contractor will provide University with a performance bond for each contract year during the Term of this Agreement. The amount of the performance bond for the first contract year during the Term of this Agreement will be equal to \_\_\_\_\_\_\_\_\_\_ (**$\_\_\_\_\_\_\_\_\_\_\_\_**). **[Note: Amount of performance bond may not exceed the contract price.]**. **[Option (Include only if the performance bond amount should be adjusted each contract year.):** Thereafter, the amount of the performance bond will be adjusted at the beginning of each contract year to \_\_\_\_\_\_\_\_\_\_.**]** The performance bond will be issued by a surety company authorized to do business in the State of Texas and acceptable to University in all respects. The performance bond will be made payable to University and conditioned upon the prompt and faithful performance of the Work and all of Contractor’s other duties and obligations under this Agreement.**]**

**5. The Contract Amount.**

5.1 So long as Contractor has provided University with its current and accurate Federal Tax Identification Number in writing, University will pay Contractor for the performance of the Work as more particularly set forth in **Exhibit C**, Payment for Services, attached and incorporated for all purposes.

5.2 The Contract Amount includes all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of this Agreement.

5.3 University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on the Work in accordance with Section 151.309, *Texas Tax Code,* and Title 34 *Texas Administrative Code* (“**TAC**”) Section 3.322.

**6. Payment Terms.**

6.1 At least ten (10) days before the end of each calendar month during the Term of this Agreement, Contractor will submit to University an invoice covering the services performed for University to that date, in compliance with **Exhibit C**, Payment for Services. Each invoice will be accompanied by documentation that University may reasonably request to support the invoice amount. University will, within twenty-one (21) days from the date it receives an invoice and supporting documentation, approve or disapprove the amount reflected in the invoice. If University approves the amount or any portion of the amount, University will promptly pay (each a “**Progress Payment**”) to Contractor the amount approved so long as Contractor is not in default under this Agreement. If University disapproves any invoice amount, University will give Contractor specific reasons for its disapproval in writing.

6.2 Within ten (10) days after final completion of the Work and acceptance of the Work by University or as soon thereafter as possible, Contractor will submit a final invoice ("**Final Invoice**") setting forth all amounts due and remaining unpaid to Contractor. Upon approval of the Final Invoice by University, University will pay ("**Final Payment**") to Contractor the amount due under the Final Invoice.

6.3 Notwithstanding any provision of this Agreement to the contrary, University will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if Contractor is in default under this Agreement.

6.4 The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount as more particularly set forth in **Exhibit C**, Payment for Services.

6.5 No payment made by University will (a) be construed to be final acceptance or approval of that part of the Work to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.

6.6 The acceptance of Final Payment by Contractor will constitute a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the Final Invoice for payment.

6.7 University will have the right to verify the details set forth in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.

6.8 Section 51.012, *Texas Education Code*, authorizes University to make any payment through electronic funds transfer methods. Contractor agrees to receive payments from University through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Agreement, University will confirm Contractor’s banking information. Any changes to Contractor’s banking information must be communicated to University in writing at least thirty (30) days in advance of the effective date of the change in accordance with **Section 12.14**.

6.9 **[Option (Include if University is entitled to a prompt payment discount.):** Notwithstanding any other provision of this Agreement, University is entitled to a “**Prompt Payment Discount**” of \_\_\_\_% off of each payment that University submits within \_\_\_\_days after University’s receipt of Contractor’s invoice for that payment.**]**

 **7. Ownership and Use of Work Material**.

7.1 All drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with the Work (collectively, "**Work Material**"), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re‑use at any time without further compensation and without any restrictions.

7.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.

7.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use the Work Material for the completion of the Work or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not be used by any person other than University on other projects unless expressly authorized by University in writing.

7.4 The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.

7.5 **[Option (Include if Contractor will create software, training materials or other Work Material (ref. Section 7) protectable by copyright, trademark, patent or other intellectual property rights. Contact OGC with questions.):** All title and interest in the Work Material will vest in University and will be deemed to be a work made for hire and made in the course of the Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University or Work Material may not be considered works made for hire, Contractor hereby irrevocably assigns, conveys and transfers to University and its successors, licensees and assigns, all rights, title and interest worldwide in and to the Work Material and all proprietary rights therein, including all copyrights, trademarks, service marks, patents, trade secrets, moral rights, all contract and licensing rights and all claims and causes of action with respect to any of the foregoing, whether now known or hereafter to become known. In the event Contractor has any rights in the Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, its successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University with the right to sublicense. These rights are assignable by University.**]**

**8. Default and Termination**.

8.1 In the event of a material failure by a party to this Agreement to perform in accordance with the terms of this Agreement (“**default**”), the other party may terminate this Agreement upon fifteen (15) days’ written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day period.

8.2 University may, without cause, terminate this Agreement at any time upon giving seven (7) days' advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for the Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.

8.3 Termination under **Sections 8.1** or **8.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.

8.4 If Contractor fails to cure any default within fifteen (15) days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with University’s curative actions.

8.5 **[Option (Include if University will make pre-payments to Contractor under this Agreement.):** In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University did not receive from Contractor prior to termination.**] [Note: Section 50 of Article 3 of the *Texas Constitution* prohibits the State of Texas or its agencies from lending the credit of the State. “Lending the credit of the State” has been broadly construed to include the making of payment prior to receipt of goods or complete performance of services. *Rhoads Drilling co. v. Allred*, 70 S.W. 2d 576, 582 (Tex. 1934); Attorney General Opinions WW-790 (1960) and WW-153 (1957). Nevertheless, according to relevant Attorney General Opinions MW-373 (1981) and JM-1229 (1990), pre-payments for goods and services may be made by the State of Texas so long as the pre-payment serves a public purpose and the State maintains controls over the transaction, contractual or otherwise, to ensure that the public purpose is actually achieved.**

**Based on Texas law related to pre-payments, the representative of U.T. with delegated authority to execute contracts containing pre-payment provisions, should analyze the transaction and make a determination regarding whether the facts lead to the conclusion that (1) there is in fact a public purpose for any pre-payments required by the contract and (2) there are sufficient controls over the transaction, contractual or otherwise, to ensure that the public purpose is actually achieved. This determination should be documented in a memorandum to U.T.'s file by setting forth the facts which lead to a conclusion of public purpose and sufficient controls to ensure the public purpose is achieved.]**

**9. Indemnification**

9.1 To the fullest extent permitted by Applicable Laws, Contractor will and does hereby agree to indemnify, protect, defend with counsel approved by University, and hold harmless University and**,** The University of Texas System, and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents (collectively “**Indemnitees**”) from and against all damages, losses, liens, causes of action, suits, judgments, expenses, and other claims of any nature, kind, or description, **[Option (*Delete* when the Work is capable of being re-characterized as “construction” even if University does not believe the Work is a “public work.”):** including reasonable attorneys’ fees incurred in investigating, defending or settling any of the foregoing**]** (collectively “**Claims**”) by any person or entity, arising out of, caused by, or resulting from Contractor’s performance under or breach of this Agreement and that are caused in whole or in part by any negligent act, negligent omission or willful misconduct of Contractor, anyone directly employed by Contractor or anyone for whose acts Contractor may be liable. The provisions of this Section will not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law or equity. All parties will be entitled to be represented by counsel at their own expense.

9.2 In addition, Contractor will and does hereby agree to indemnify, protect, defend with counsel approved by University, and hold harmless Indemnitees from and against all claims arising from infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of the performance of services or the provision of goods by Contractor, or the use by Indemnitees, at the direction of Contractor, of any article or material; provided, that, upon becoming aware of a suit or threat of suit for infringement, University will promptly notify Contractor and Contractor will be given the opportunity to negotiate a settlement. In the event of litigation, University agrees to reasonably cooperate with Contractor. All parties will be entitled to be represented by counsel at their own expense.

**10. Relationship of the Parties**.

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University. Contractor will not bind nor attempt to bind University to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers’ compensation insurance.

**11. Insurance**.

11.1 Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code, having an A.M. Best Rating of A-:VII or better, and in amounts not less than the following minimum limits of coverage:

11.1.1 Workers’ Compensation Insurance with statutory limits, and Employer’s Liability Insurance with limits of not less than $1,000,000:

Employers Liability - Each Accident $1,000,000

Employers Liability - Each Employee $1,000,000

Employers Liability - Policy Limit $1,000,000

Workers’ Compensation policy must include under Item 3.A. on the information page of the Workers’ Compensation policy the state in which Work is to be performed for University.

11.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit $1,000,000

Damage to Rented Premises $ 300,000

Personal & Advertising Injury                  $1,000,000

General Aggregate                                             $2,000,000

Products - Completed Operations Aggregate      $2,000,000

The required Commercial General Liability policy will be issued on a form that insures Contractor’s and subcontractor’s liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

11.1.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than $1,000,000 single limit of liability per accident for Bodily Injury and Property Damage;

 **[Option:** If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.**]**

 **[Option:** Contractors transporting hazardous materials must provide the MCS-90 endorsement and CA9948 Broadened Pollution Liability endorsement on the Business Auto Liability policy. Policy limits must be in line with Federal requirements.**]**

**[Option:** 11.1.4 Umbrella/Excess Liability Insurance with limits of not less than $2,000,000 per occurrence and aggregate with a deductible of no more than $10,000, and will be excess over and at least as broad as the underlying coverage as required under sections 11.1.1 Employer’s Liability; 11.1.2 Commercial General Liability; **[Option:** and**]** 11.1.3 Business Auto Liability **[Option:** ; and 11.1.5 Liquor Liability**]**. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.**] ]** **[Note: Limit amount should be adequate to cover University’s exposure. Appropriate limit will depend on the subject matter of this Agreement.]**

 **[Option:** 11.1.5 Liquor Liability Insurance, with limits of not less than $1,000,000 per occurrence, $2,000,000 aggregate for bodily injury and property damage arising from selling, serving or furnishing of any alcoholic beverage by Contractor or Contractor’s employees, representatives, agents, or subcontractors in the performance of this Agreement.**]**

 **[Option:** 11.1.6 Professional Liability (Errors & Omissions) Insurance with limits of not less than $1,000,000 each occurrence, $3,000,000 aggregate. Such insurance will cover all Work performed by or on behalf of Contractor and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Contractor agrees to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy.No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.**]**

 **[Option:** 11.1.7 Contractor’s Employee Dishonesty Insurance will be endorsed with a Client’s Property Endorsement (or equivalent) to protect the assets and property of University with limits of not less than **[Option:** $500,000**] [Option:** $1,000,000**]** per claim. If Contractor has property of University in its care, custody or control away from University’s premises, Contractor will provide bailee coverage for the replacement cost of the property. Contractor’s Employee Dishonesty policy will name University as Loss Payee. **[Note: Limit amount should be adequate to cover University’s exposure. Appropriate limit will depend on the subject matter of this Agreement.]**

 **[Option:** 11.1.8 Directors’ and Officers’ Liability Insurance with limits of not less than $1,000,000 per claim. The coverage will be continuous for the duration of this Agreement and for not less than twenty-four (24) months following the expiration or termination of this Agreement.**]**

**[Note:** If this Agreement involves construction on property owned by the Board of Regents of The University of Texas System, please contact the UT System Office of Risk Management for guidance and relevant insurance requirements.**]**

**[Note:** If this Agreement poses potential risks related to data privacy, network or information security, please contact the UT System Office of Risk Management for guidance on relevant insurance requirements and seek review of the contract by the Institution’s Information Security Officer.**]**

11.2 Contractor will deliver to University:

11.2.1 Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all required insurance policies after the execution and delivery of this Agreement and prior to the performance of any Work by Contractor under this Agreement. Additional evidence of insurance will be provided verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

11.2.1.1 ***All insurance policies*** (with the exception of workers’ compensation, employer’s liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System, The University of Texas System and University as Additional Insureds for liability caused in whole or in part by Contractor’s acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.

11.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System**,** The University of Texas System and University. ***All insurance policies*** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System**,** The University of Texas System and University. No policy will be canceled until after thirty (30) days' unconditional written notice to University. ***All insurance policies*** will be endorsed to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 11**.

11.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

11.2.1.4 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name: Michael Ochoa, C.P.M.

 UTHealth

Purchasing Contracts Administrator

Address: 1851 Crosspoint, OCB1.160

 Houston, Texas 77054

Facsimile Number: 713-500-4710

Email Address: Michael.Ochoa@uth.tmc.edu

11.3 Contractor’s or subcontractor’s insurance will be primary to any insurance carried or self-insurance program established by University or the University of Texas System. Contractor’s or subcontractor’s insurance will be kept in force until all Work has been fully performed and accepted by University in writing. **[Option:** , except as provided in this **Section 11.3**.**]**

**[Option:** 11.3.1 Professional Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of this policy.**]**

**[Option:** 11.3.2 Directors and Officers Liability Insurance coverage written on a claims-made basis requires Contractor to purchase an Extended Reporting Period Endorsement, effective for twenty-four (24) months after the expiration or cancellation of this policy.**]]**

**12. Miscellaneous**.

12.1 **Assignment and Subcontracting.** **[Option (Include if the value of this Agreement is expected to equal or exceed $100,000 or if University has requested a HUB Subcontracting Plan.):** Except as specifically provided in **Exhibit E**, Historically Underutilized Business Subcontracting Plan, attached and incorporated for all purposes,**]** Contractor's interest in this Agreement (including Contractor’s duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Applicable Laws, including Chapter 2161, *Texas Government Code*, and 34 TAC Chapter 20,§§20.101 – 20.108. The benefits and burdens of this Agreement are assignable by University.

12.2 ***Texas Family Code* Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

12.3 **Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code (“**Chapter 171**”), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

12.4 **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until the debt or delinquency is paid in full.

12.5 **Loss of Funding.** University performance of its duties and obligations under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”) and/or allocation of funds by the Board of Regents of The University of Texas System (the “**Board**”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

12.6 **Entire Agreement; Modifications.** This Agreement supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by both University and Contractor.

12.7 **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (“**force majeure occurrence**”). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide healthcare services during the occurrence.

12.8 **Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

12.9 **Governing Law.** Harris County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties to this Agreement and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

12.10 **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

**[NOTE:** **BEFORE A UT INSTITUTION EXECUTES THIS AGREEMENT, it is the UT Institution’s sole responsibility to (1) identify what categories and or sources of FERPA data or HIPAA data, if any, Contractor will access, create or maintain on behalf of University pursuant to this Agreement, (2) ensure that the FERPA Confidentiality and Security Addendum and/or the HIPAA Business Associate Agreement made a part of this Agreement is accurate as of the Effective Date as well as the date this Agreement is signed by the UT Institution; (3) confirm the FERPA Confidentiality and Security Addendum and/or the HIPAA Business Associate Agreement is suitable given the terms of the contract to which it is attached; and (4) ensure that any modifications to the model FERPA Confidentiality and Security Addendum or the HIPAA Business Associate Agreement have been reviewed and approved for FERPA/HIPAA compliance by the UT  Institution, as applicable.**

**[NOTE: Before including provisions related to HIPAA in this Agreement, the UT Institution must determine whether it is a HIPAA Covered Entity. Refer to Section 12.26 for more information.]**

12.11 **Confidentiality and Safeguarding of University Records; Press Releases; Public Information.**  Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, “**University Records**”). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws. **[Option (Include if University Records are subject to FERPA.):** Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“**FERPA**”) are addressed in **Section 12.41**.**] [Option (Include if University is a HIPAA Covered Entity and University Records are subject to HIPAA.):** Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Health Insurance Portability and Accountability Act and Code of Federal Regulations Title 45, Part 160 and subparts A and E of Part 164 (collectively “**HIPAA**”) are addressed in **Section 12.26**.**]** Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security **[Option (Include if Section 12.39 related to Payment Card Industry Data Security Standards is not include in this Agreement.):**, as well as the Payment Card Industry Data Security Standards**]**) that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with University Rules regarding access to and use of University’s computer systems, including UTS 165 at http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records. **[Alternate (Use if University has confirmed that University will not provide Contractor any University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the Texas Public Information Act.): Confidentiality and Safeguarding of University Records; Press Releases; Public Information.**  Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, “**University Records**”). However, it is expressly agreed that University will not provide to Contractor, and Contractor will never seek to access, any University Records that contain personally identifiable information regarding any individual that is not available to any requestor under the *Texas Public Information Act*, Chapter 552, Texas Government Code, including “directory information” of any student who has opted to prohibit the release of their “directory information” as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“**FERPA**”) and its implementing regulations. **[Option (Include if University is a HIPAA Covered Entity and University Records are subject to HIPAA.):** Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Health Insurance Portability and Accountability Act and Code of Federal Regulations Title 45, Part 160 and subparts A and E of Part 164 (collectively “**HIPAA**”) are addressed in **Section 12.26**.**]** Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security **[Option (Include if Section 12.39 related to Payment Card Industry Data Security Standards is not include in this Agreement.):**, as well as the Payment Card Industry Data Security Standards**]**) that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with University Rules regarding access to and use of University’s computer systems, including UTS 165 at http://www.utsystem.edu/bor/procedures/policy/policies/uts165.html. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.**]**

12.11.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor’s discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.

12.11.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor’s intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.

12.11.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 12.11**.

12.11.4 **Press Releases.** Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.

12.11.5 **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* (“**TPIA**”), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of TPIA and Section 2252.907, *Texas Government Code*, and **at no additional charge to University,** **Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public**.

12.11.6 **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.

12.11.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

12.12 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

12.13 **Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments will be available to University or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless University otherwise instructs Contractor in writing.

12.14 **Notices.** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

 If to University: The University of Texas Health Science Center at Houston

 Procurement Services

 1851 Crosspoint, OCB1.160

 Houston, Texas 77054

 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 *with copy to:* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 If to Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 or other person or address as may be given in writing by either party to the other in accordance with this Section.

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to University pursuant to Section 2251.054, *Texas Government Code*, then Contractor will send that notice to University as follows:

 The University of Texas Health Science Center at Houston

 Procurement Services

 1851 Crosspoint, OCB1.160

 Houston, Texas 77054

 Fax: 713-500-4710

 Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 *with copy to:* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

or other person or address as may be given in writing by University to Contractor in accordance with this Section.

12.15 **Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

12.16 **State Auditor’s Office.** Contractor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “**Auditor**”), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with subcontractors.

12.17 **Limitation of Liability.** Except for University’s obligation (if any) to pay Contractor certain fees and expenses University will have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any duty or obligation of University to Contractor or to anyone claiming through or under Contractor, no present or future affiliated enterprise, subcontractor, agent, officer, director, employee, representative, attorney or regent of University, or The University of Texas System, or anyone claiming under University has or will have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

**[Option (Include when the Work is capable of being re-characterized as “construction” even if University does not believe the Work is a “public work.”):** Contractor will receive no financial compensation for delay or hindrance to the Work. In no event will University be liable to Contractor or its employees, agents, representatives or subcontractors, for any damages arising out of or associated with any delay or hindrance to the Work, regardless of the source of the delay or hindrance, including a force majeure occurrence, and even if such delay or hindrance results from, arises out of, or is due, in whole or in part, to the negligence, breach of contract or other fault of University. Contractor’s sole remedy in any such case will be an extension of time.

In any action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, neither party will be entitled to recover attorneys’ fees, costs or other related expenses from the other party.**]**

12.18 **Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including **Sections 6.7**, **9**, **12.5**, **12.9**, **12.10**, **12.11**, **12.13**, **12.16**, **12.17**, **12.19** and **12.21**.

12.19 **Breach of Contract Claims.**

12.19.1 To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Laws, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

12.19.1.1 Contractor’s claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by subchapter B of Chapter 2260, to University in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that University allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer of University, or another officer of University as may be designated from time to time by University by written notice to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.

12.19.1.2 If the parties are unable to resolve their disputes under **Section 12.19.1.1**, the contested case process provided in subchapter C of Chapter 2260 is Contractor’s sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.

12.19.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.

12.19.2 The submission, processing and resolution of Contractor’s claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.

12.19.3 University and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

12.20 **Undocumented Workers.** The *Immigration and Nationality Act* (8 *United States Code* 1324a) (“**Immigration Act**”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“**I-9 Form**”) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement in accordance with **Section 8**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

12.21 **Limitations.**  The Parties are aware that there are constitutional and statutory limitations on the authority of University (a state agency) to enter into certain terms and conditions that may be a part of this Agreement, including those terms and conditions relating to liens on University’s property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys’ fees; dispute resolution; indemnities; and confidentiality (collectively, the “**Limitations**”), and terms and conditions related to the Limitations will not be binding on University except to the extent authorized by the laws and Constitution of the State of Texas.

12.22 **Ethics Matters;** **No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University’s Conflicts of Interest Policy available at <http://www.uthouston.edu/hoop/policy.htm?id=1447888>, University’s Standards of Conduct Guide available at <http://www.uthouston.edu/hoop/standards-of-conduct-guide.htm>, and applicable state ethics laws and rules available at [www.utsystem.edu/ogc/ethics](http://www.utsystem.edu/ogc/ethics). Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University’s Conflicts of Interest Policy, provisions described by University’s Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

12.23 **[Note: Include the following provision if “computer equipment” is being purchased or leased under this Agreement. The term “computer equipment” includes desktop or notebook computers as well as a computer monitor or other display device that does not contain a tuner.] State of Texas Computer Equipment Recycling Program Certification.** Pursuant to Section 361.965,*Texas Health and Safety Code,*Contractor certifies that it is full compliance with the *State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act* set forth in Chapter 361, Subchapter Y, *Texas Health and Safety Code,* and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in Title 30, Chapter 328, Subchapter I, *Texas Administrative Code*. Contractor acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

12.24 **[Option (Include if University cannot be reasonably or adequately compensated in damages for the loss of Contractor’s services.): Enforcement.** Contractor agrees and acknowledges that University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing the Work. Contractor's services provide a peculiar value to University. University cannot be reasonably or adequately compensated in damages for the loss of Contractor’s services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that University will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.**]**

12.25 **[Option (Include if this Agreement relates to electronic and information resources, including hardware, software or related services.): Access by Individuals with Disabilities.** Contractor represents and warrants (“**EIR Accessibility Warranty**”) that the electronic and information resources and all associated information, documentation, and support that it provides to University under this Agreement (collectively, the “**EIRs**”) comply with the applicable requirements set forth in Title 1 TAC Chapter 213 and Title 1 TAC Section 206.70 (as authorized by Chapter 2054, Subchapter M, *Texas Government Code*). To the extent Contractor becomes aware that the EIRs, or any portion of the EIRs, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor is unable to do so, then University may terminate this Agreement and Contractor will refund to University all amounts University has paid under this Agreement within thirty (30) days after the termination date. **[NOTE: ADD THE FOLLOWING IF THIS AGREEMENT IS PROCURING AN INFORMATION RESOURCES TECHNOLOGY PROJECT THAT MEETS THE REQUIREMENTS IN TITLE 1, RULE §213.38 (G) OF THE *TEXAS ADMINISTRATIVE CODE* (**[link](http://texreg.sos.state.tx.us/public/readtac%24ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=10&ch=213&rl=38)**):** Contractor will provide all assistance and cooperation necessary for the performance of accessibility testing conducted by University or University’s third party testing resources as required by Title 1, Rule §213.38(g) of the *Texas Administrative Code*.**]**

**[NOTE: SECTION 12.26 SHOULD NOT BE USED BY INSTITUTIONS THAT ARE NOT HIPAA COVERED ENTITIES. Before including Section 12.26, the UT Institution must determine whether it is a HIPAA Covered Entity.**

**Before the UT Institution executes this Agreement, it is the sole responsibility of the UT Institution (1) to determine whether the UT Institution is subject to HIPAA and, therefore, a HIPAA Covered Entity, and, if so, (2) to ensure that any agreement into which it enters that involves access to PHI subject to HIPAA is HIPAA Compliant. If you are in doubt, check with your Institution’s Privacy Officer or OGC. Each Institution subject to HIPAA has its own HIPAA BAA template for contracting use. The template should be modified as required depending on the terms of the contract and reviewed and approved by the Institution’s Privacy Officer or their designee.]**

12.26 **[Option: (If University is a HIPAA covered entity, use in all contracts under which Contractor will access University Records subject to HIPAA.): HIPAA Compliance.** University is a HIPAA Covered Entity and some of the information Contractor receives, maintains or creates for or on behalf of University may constitute Protected Health Information (“**PHI**”) that is subject to HIPAA. Before Contractor may receive, maintain or create any University Records subject to HIPAA, Contractor will execute the HIPAA Business Associate Agreement (“**BAA**”) set forth in **Exhibit D**, HIPAA Business Associate Agreement, attached and incorporated for all purposes. To the extent that the BAA conflicts with any term contained in this Agreement, the terms of the BAA will control.

12.27 **[Option (Include if HUB Subcontracting Plan has been attached as Exhibit E.): Historically Underutilized Business Subcontracting Plan.** Contractor agrees to use good faith efforts to subcontract the Work in accordance with the Historically Underutilized Business Subcontracting Plan (“**HSP**”) (ref. **Exhibit E**). Contractor agrees to maintain business records documenting its compliance with the HSP and to submit a monthly compliance report to University in the format required by Texas Procurement and Support Services Division of the Texas Comptroller of Public Accounts or any successor agency (collectively, “**TPSS**”). Submission of compliance reports will be required as a condition for payment under this Agreement. If University determines that Contractor has failed to subcontract as set out in the HSP, University will notify Contractor of any deficiencies and give Contractor an opportunity to submit documentation and explain why the failure to comply with the HSP should not be attributed to a lack of good faith effort by Contractor. If University determines that Contractor failed to implement the HSP in good faith, University, in addition to any other remedies, may report nonperformance to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108. University may also revoke this Agreement for breach and make a claim against Contractor.

12.27.1 **Changes to the HSP.** If at any time during the Term of this Agreement, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with 34 TAC Section 20.14; (b) the changes must be reviewed and approved by University; and (c) if University approves changes to the HSP, this Agreement must be amended in accordance with **Section 12.6** to replace the HSP with the revised subcontracting plan.

12.27.2 **Expansion of the Work.** If University expands the scope of the Work through a change order or any other amendment, University will determine if the additional Work contains probable subcontracting opportunities *not* identified in the initial solicitation for the Work. If University determines additional probable subcontracting opportunities exist, Contractor will submit an amended subcontracting plan covering those opportunities. The amended subcontracting plan must comply with the provisions of 34 TAC Section 20.14 before (a) this Agreement may be amended to include the additional Work; or (b) Contractor may perform the additional Work. If Contractor subcontracts any of the additional subcontracting opportunities identified by University without prior authorization and without complying with 34 TAC Section 20.14, Contractor will be deemed to be in breach of this Agreement under **Section 8** and will be subject to any remedial actions provided by Applicable Laws, including Chapter 2161, *Texas Government Code* and 34 TAC Section 20.14. University may report nonperformance under this Agreement to the TPSS in accordance with 34 TAC Sections 20.101 through 20.108.**]**

12.28 **Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform the Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing the Work under this Agreement. Prior to commencing the Work, Contractor will (1) provide University with a list ("**List**") of all individuals who may be assigned to perform the Work, and (2) have an appropriate criminal background screening performed on all the individuals. Contractor will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University’s campus who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform the Work.

 Prior to commencing performance of the Work under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals assigned to perform the Work.

12.29 **[Option: (Include when Joint Commission standards apply to the Work being provided.): Quality Assurance.** Contractor will (a) comply with all applicable standards of the Joint Commission ("**Joint Commission**"); (b) implement and monitor a quality assurance process that complies with Joint Commission standards; (c) comply with applicable Joint Commission privileging standards for licensed independent practitioners; (d) upon request, provide assurance to University of a licensed independent practitioner's privileging file; and (e) provide University with periodic reports of its quality assurance indicators and/or permit University to conduct periodic quality assurance audits of the Work.**]**

**[Options (If University is an institution that receives funds from Medicare/Medicaid or if cost of Work is included in amounts charged back to federal sponsored projects, federal contracts or federal grants, consult with University’s *Office of Sponsored Projects* to determine whether inclusions of Sections 12.30 through 12.36 or other contract provisions are required.):**

12.30 **Certifications of Nonsegregated Facilities and Equal Employment Opportunities Compliance**. Contractor certifies that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (1) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (2) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (3) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. A breach of this certification is a violation of the Equal Opportunity clause. The term "**segregated facilities**" means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Contractor further agrees that, except where it has contracts prior to the award with subcontractors exceeding $10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Contractor will retain the certifications for each one of its subcontractors in Contractor’s files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding $10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually, or annually).

Contractor understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.

12.31 **Debarment**. Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (“**U.S.**”) federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.sam.gov/>) issued by the U.S. General Services Administration. “**Principals**” means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to University if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when University executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to University, University may terminate this Agreement for default by Contractor.

12.32 **Office of Inspector General Certification**. Contractor acknowledges that University is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at University’s premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("**OIG**") to work on site at University’s premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at University’s premises or facilities. Contractor acknowledges that University will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at University‘s premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: <http://exclusions.oig.hhs.gov/>

12.33 **Access to Documents**. To the extent applicable to this Agreement, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services and their duly authorized representatives.

12.34 **Affirmative Action**. A written copy of Contractor’s Civil Rights "**Affirmative Action Compliance Program**" is attached as **Exhibit \_\_\_\_** to this Agreement and incorporated for all purposes, or if Contractor is not required to have such a written program, the reason Contractor is not subject to such requirement is attached as **Exhibit \_\_\_\_** to this Agreement and incorporated for all purposes.

12.35 **OSHA Compliance**. To the extent applicable to the services to be performed under this Agreement, Contractor represents and warrants, that all articles and services furnished under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-598) and its regulations in effect or proposed as of the date of this Agreement.

12.36 **Discrimination Prohibited.** University and Contractor will abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a) (collectively, the “**Regulations**”). The regulations (1) prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and (2) prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, the regulations require that University and Contractor take affirmative action to employ and advance in employment, individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**]**

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

**UNIVERSITY: CONTRACTOR:**

**THE UNIVERSITY OF TEXAS**

**HEALTH SCIENCE CENTER AT HOUSTON**

By: By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **[Option (Include if Contractor is a corporation.):**

 Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Corporate Secretary**]**

**Attach:**

**EXHIBIT A** – **Scope of Work**

**EXHIBIT B** – **Schedule**

**EXHIBIT C –** **Payment for Services**

 **EXHIBIT A**

 **SCOPE OF WORK**

**[Note: Provide a detailed description and break-down of all tasks Contractor is to perform and technical standards for the tasks, if appropriate.]**

**EXHIBIT B**

 **SCHEDULE**

**[Note: Describe specific time deadlines and due dates for each phase of the Work and, if appropriate, for the Work as a whole.]**

**EXHIBIT C**

 **PAYMENT FOR SERVICES**

**SERVICE FEES: [Note: Specify payment model. If the fee is not a stipulated lump sum, include a “not to exceed” fee cap amount.]**

Notwithstanding the foregoing, the cumulative amount of Service Fees remitted by University to Contractor will not exceed **$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“**Fee Cap**”) without the prior written approval of University. In addition, total fees for each Phase of the Work will not exceed the following specified amounts without the prior written approval of University:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If University submits, in advance, a written request for additional services not contemplated or reasonably inferred by this Agreement, Contractor will be paid for actual hours incurred by Contractor’s personnel directly and solely in support of the additional services at the Rates set forth above.

**[Note:**

**Air Travel and Rental Car**

**At this time, Contractor may not book air travel or rental car directly with travel vendors and obtain the State rates. If the UT institution books air travel and rental car for Contractor and pays the travel vendor directly (direct bill to UT), then the UT institution will receive the State rate for Contractor’s airfare and rental car.**

**Hotel Reservations**

***State Hotel Rates*:  A hotel under contract with the State may, at the hotel’s discretion, offer the State rate for Contractor travel. The hotel, at the hotel’s discretion, may permit the Contractor to book and pay the reservation or may require the UT institution to book and pay the reservation (direct bill to UT). The UT institution should contact the hotel to ask if (1) the hotel honors the State rate for Contractor travel, and (2) the hotel requires UT to book and pay the reservation (direct bill to UT).**

***UT Negotiated Hotel Rates*:  The UT institution may obtain the UT negotiated hotel rates (when available) for Contractor travel. The UT institution should contact the hotel to confirm the reservation and ask if the hotel requires UT to pay for the reservation (direct bill to UT).**

**Cancellation Charges**

**Be aware that if UT institutions book travel for Contractor, then any cancellation charges will be charged to the UT institution.]**

**Expenses and disbursements:** Contractor will be reimbursed without mark-up for reasonable expenses (including meals, rental car or mileage, coach class airfare, and lodging) validly incurred directly and solely in support of the Project and approved by University in advance. Provided, however, Contractor agrees and acknowledges that Contractor will be subject to the then-current Travel Reimbursement Rates promulgated by the Comptroller of Public Accounts for the State of Texas at <https://fmx.cpa.state.tx.us/fm/travel/travelrates.php> with regard to meals, mileage, **[Option:** rental car**]** **[Option:** , airfare,**]** **[Option:** lodging**]**and all other expenses related to travel **[Option:** , except **[Option:** rental car**]**, **[Option:** airfare**]** and **[Option:** lodging**] ]**. **[Option:** Except as provided in this Agreement,**]** Contractor agrees and acknowledges that Contractor will not be reimbursed by University for expenses that are prohibited or that exceed the allowable amounts set forth in the then-current Travel Reimbursement Rates. As a condition precedent to receiving reimbursement for expenses and disbursements, Contractor will submit to University receipts, invoices, and other documentation as requested University.

Notwithstanding the foregoing, reimbursement for expenses and disbursements will not exceed a maximum of **$\_\_\_\_\_\_\_\_\_\_\_\_\_** (“**Expense Cap**”)without the prior written approval of University.

The Fee Cap and the Expense Cap are sometimes collectively referred to as the “**Contract Amount**.”