



REQUEST FOR PROPOSAL

RFP No. 720-2006 Lease Accounting Software

Proposal Submittal Deadline: Wednesday, January 15th, 2020 at 2:30 PM CST

The University of Texas System
Controller

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REQUEST FOR PROPOSAL

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SECTION 1

INTRODUCTION

1.1 Description of The University of Texas System

For more than 130 years, The University of Texas System has been committed to improving the lives of Texans and people all over the world through education, research and health care.

The University of Texas System is one of the nation's largest systems of higher education, with [14 institutions](#) that educate more than 230,000 students. Each year, UT institutions award more than one-third of all undergraduate degrees in Texas and almost two-thirds of all health professional degrees. With about 20,000 faculty – including Nobel laureates – and more than 80,000 health care professionals, researchers, student advisors and support staff, the UT System is one of the largest employers in the state.

Life-changing research and invention of new technologies at UT institutions places the UT System among the [top 10 “World’s Most Innovative Universities,”](#) according to Reuters. The UT System [ranks eighth in the nation in patent applications](#), and because of the high caliber of scientific research conducted at UT institutions, the UT System is ranked No. 1 in Texas and No. 3 in the nation in federal research expenditures.

In addition, the UT System is home to three of the nation's National Cancer Institute Cancer Centers – UT MD Anderson, UT Southwestern and UT Health Science Center-San Antonio – which must meet rigorous criteria for world-class programs in cancer research. And the UT System is the only System in the country to have four Clinical and Translational Science Awards (CTSA) from the National Institutes of Health.

Transformational initiatives implemented over the past several years have cemented UT as a national leader in higher education, including the expansion of educational opportunities in South Texas with the opening of The University of Texas Rio Grande Valley in 2015. And UT was the only system of higher education in the nation that established not one, but two new medical schools in 2016 at The University of Texas at Austin and UT Rio Grande Valley.

University of Texas institutions are setting the standard for excellence in higher education and will continue to do so thanks to our generous donors and the leadership of the [Chancellor](#), [Board of Regents](#) and [UT presidents](#).

1.2 Background and Special Circumstances

Contractor will provide lease accounting software designed to meet the requirements of Governmental Accounting Standards Board Statement No. 87 on Leases. The software will perform calculation and produce footnotes disclosures for the consolidated financial report.

1.3 Objective of Request for Proposal

The University of Texas System is soliciting proposals in response to this Request for Proposal No.720-2006 (this “RFP”), from qualified vendors to provide Lease Accounting Software (the “Software” or “Solution”) more specifically described in **Section 5** of this RFP.

1.4 Group Purchase Authority

Texas law authorizes institutions of higher education (defined by [§61.003, Education Code](#)) to use the group purchasing procurement method (ref. §§[51.9335](#), [73.115](#), and [74.008](#), *Education Code*). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System (**UT System**), which is comprised of fourteen institutions described at <http://www.utsystem.edu/institutions>. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this RFP could give rise to additional purchase volumes. As a result, in submitting its proposal, Proposer should consider proposing a pricing model and other commercial terms that take into account the higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP. Any purchases made by other institutions based on this RFP will be the sole responsibility of those institutions.

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until 2:30 p.m., Central Standard Time (“**CST**”) on Wednesday, January 15th, 2020 (the “**Submittal Deadline**”).

2.3 Criteria for Selection

The successful Proposer, if any, selected by University through this RFP will be the Proposer that submits a proposal on or before the Submittal Deadline that is the most advantageous to University. The successful Proposer is referred to as “**Contractor**.”

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) service, (2) total overall cost, and (3) project management expertise.

The evaluation of proposals and the selection of Contractor will be based on the information provided in the proposal. University may consider additional information if University determines the information is relevant.

Criteria to be considered by University in evaluating proposals and selecting Contractor, will be these factors:

2.3.1 Threshold Criteria Not Scored

- A. Ability of University to comply with laws regarding Historically Underutilized Businesses; and
- B. Ability of University to comply with laws regarding purchases from persons with disabilities.

2.3.2 Scored Criteria

- A. Cost (25%);
- B. Vendor Qualifications and Experience (15%);
- C. Solution Proposal (50%);
- D. Licensing, Maintenance and Support (10%).

2.4 Key Events Schedule

Issuance of RFP	December 11 th , 2019
Pre-Proposal Call	2:00 p.m. CST on Tuesday, December 17 th , 2019
Deadline for Questions / Concerns (ref. Section 2.2 of this RFP)	2:30 p.m. CST on Wednesday, December 18 th , 2019
Submittal Deadline (ref. Section 2.1 of this RFP)	2:30 p.m. CST on Wednesday, January 15 th , 2020

2.5 Historically Underutilized Businesses

- 2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a “HUB”) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any of the Services, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by Proposer is subject to review by University to ensure compliance with the HUB program.
- 2.5.2 University has reviewed this RFP in accordance with [Title 34, Texas Administrative Code, Section 20.285](#), and has determined that subcontracting opportunities (HUB and/or Non-HUB) are probable under this RFP. The HUB participation goal for this RFP is **26%**.
- 2.5.3 A HUB Subcontracting Plan (“HSP”) is required as part of, *but submitted separately from*, Proposer’s proposal. The HSP will be developed and administered in accordance with University’s Policy on Utilization of Historically Underutilized Businesses and incorporated for all purposes.

*Each Proposer, **whether self-performing or planning to subcontract**, must complete and return the HSP in accordance with the terms and conditions of this RFP. Proposers that fail to do so will be considered non-responsive to this RFP in accordance with [§2161.252, Government Code](#).*

Questions regarding the HSP may be directed to:

Contact: Kyle Hayes
HUB Coordinator
Phone: 512-322-3745
Email: khayes@utsystem.edu

Contractor will not be permitted to change its HSP after the deadline submittal date unless: (1) Contractor completes a new HSP, setting forth all modifications requested by Contractor, (2) Contractor provides the modified HSP to University, (3) University HUB Program Office approves the modified HSP in writing, and (4) all agreements resulting from this RFP are amended in writing to conform to the modified HSP.

Instructions on completing an HSP

Proposer must visit <https://www.utsystem.edu/offices/historically-underutilized-business/hub-forms> to download the most appropriate HUB Subcontracting Plan (HSP) / Exhibit H form for use with this Request for Proposal. Proposer will find, on the HUB Forms webpage, a link to “[Guide to Selecting the Appropriate HSP Option](#)”. **Click on this link and read the Guide first before selecting an HSP Option.** Proposer shall select, from the four (4) Options available, the Option that is most applicable to Proposer’s

subcontracting intentions. These forms are in **fillable** PDF format and must be downloaded and opened with *Adobe Acrobat / Reader* to utilize the fillable function. If Proposer has any questions regarding which Option to use, Proposer shall submit the question via Bonfire portal.

Proposer must complete the HSP, then print, sign and scan *all pages* of the HSP Option selected, with additional support documentation*, **and submit via Bonfire portal.** NOTE: signatures must be “wet” signatures. Digital signatures are not acceptable.

Any proposal submitted in response to this RFP that does not have a corresponding HSP meeting the above requirements may be rejected by University and returned to Proposer as non-responsive due to material failure to comply with advertised specifications.

Each Proposer’s HSP will be evaluated for completeness and compliance prior to opening the proposal to confirm Proposer compliance with HSP rules and standards. Proposer’s failure to submit one (1) completed and signed HUB Subcontracting Plan **to the Bonfire portal** may result in University’s rejection of the proposal as non-responsive due to material failure to comply with advertised specifications.

***If Proposer’s submitted HSP refers to specific page(s) / Sections(s) of Proposer’s proposal that explain how Proposer will perform entire contract with its own equipment, supplies, materials and/or employees, Proposer must submit copies of those pages with the HSP sent to the Bonfire Portal. In addition, all solicitation emails to potential subcontractors must be included as backup documentation to the Proposer’s HSP to demonstrate Good Faith Effort.** Failure to do so will slow the evaluation process and may result in DISQUALIFICATION.

2.6 Pre-Proposal Call

University will hold a pre-proposal call at 2:00 p.m., Central Time on Tuesday, December 17th, 2019.

Call-in number: (877)226-9790

Participant Code: 6269693#

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Proposal Validity Period

Each proposal must state that it will remain valid for University's acceptance for a minimum of one hundred and twenty (120) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.2 Terms and Conditions

3.2.1 Proposer must comply with the requirements and specifications contained in this RFP, including the Terms and Conditions (ref. **APPENDIX TWO**), the Notice to Proposer (ref. **Section 2** of this RFP), Proposal Requirements (ref. **APPENDIX ONE**) and the Specifications and Additional Questions (ref. **Section 5** of this RFP). If there is a conflict among the provisions in this RFP, the provision requiring Proposer to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

3.2.1.1. Specifications and Additional Questions (ref. **Section 5** of this RFP);

3.2.1.2. Terms and Conditions (ref. **Section 4** and **APPENDIX TWO**);

3.2.1.3. Proposal Requirements (ref. **APPENDIX ONE**);

3.2.1.4. Notice to Proposers (ref. **Section 2** of this RFP).

SECTION 4

GENERAL TERMS AND CONDITIONS

The terms and conditions contained in the attached Agreement (ref. **APPENDIX TWO**) or, in the sole discretion of University, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreement that results from this RFP. If Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will submit redlined **APPENDIX TWO** as part of its proposal in accordance with **Section 5.3.1** of this RFP. Proposer's exceptions will be reviewed by University and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then University may consider Proposer's exceptions when University evaluates the Proposer's proposal

Additionally, Proposer must submit as part of its Proposal all terms and conditions that it proposes to include in any contract or agreement resulting from this RFP (such as software license terms and conditions) in accordance with **Section 5.3.1** of this RFP. Proposer bears all risk and responsibility for its failure to include such terms and conditions in its Proposal. The University will not be bound by or required to accept or agree to any terms and conditions that a Proposer includes (or fails to include) in its Proposal.

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

The minimum requirements and the specifications for the Services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in **Section 2.3** of this RFP, the successful Proposer is referred to as the “**Contractor.**”

Contract Term: University intends to enter into an agreement with the Contractor to perform the Services for an initial five (5) year base term, with the option to renew for one (1) additional five (5) years renewal periods, upon mutual written agreement of both parties.

Approval by the Board of Regents: No Agreement resulting from this RFP will be effective for amounts exceeding one million dollars (\$1,000,000) until approved by the Board of Regents of The University of Texas System.

5.2 Additional Information

Proposer must submit the following information as part of Proposer’s proposal:

- 5.2.1 If Proposer takes exception to any terms or conditions set forth in the Agreement (ref. **APPENDIX TWO**), Proposer must redline APPENDIX TWO and include **APPENDIX TWO** as part of its Proposal. If Proposer agrees with terms or conditions set forth in the **APPENDIX TWO**, Proposer will submit a written statement acknowledging it.
- 5.2.2 By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**), Proposer agrees to comply with Certificate of Interested Parties laws (ref. [§2252.908, Government Code](#)) and [1 TAC §§46.1 through 46.5](#)) as implemented by the Texas Ethics Commission (“TEC”), including, among other things, providing TEC and University with information required on the form promulgated by TEC and set forth in **APPENDIX FIVE**. *Proposer may learn more about these disclosure requirements, including applicable exceptions and use of the TEC electronic filing system, by reviewing [§2252.908, Government Code](#), and information on the TEC website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html. **The Certificate of Interested Parties must only be submitted by Contractor upon delivery to University of a signed Agreement.***
- 5.2.3 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the “Access by Individuals with Disabilities” language that is set forth in **APPENDIX THREE, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the “Access by Individuals with Disabilities” language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer’s objection. NOTE THAT A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION. NOTE THAT PROPOSER IS REQUIRED TO SUBMIT COMPLETED VPAT (VOLUNTARY PRODUCT ACCESSIBILITY TEMPLATE) WITH PROPOSAL. VPAT document to complete is located at the following website: <https://www.itic.org/dotAsset/d432b9da-3696-47fe-a521-7d0458d48202.doc>.
- 5.2.4 In its proposal, Proposer must respond to each item listed in **APPENDIX FOUR**, Higher Education Vendor Assessment Tool (HECVAT).

5.2.5 In its proposal, Proposer must respond to each item listed in **APPENDIX SIX**, Additional Security Questions.

5.3 Scope of Work

Contractor will provide the following services to University:

A. Lessee and Lessor Accounting

1. Perform calculations for initial and subsequent measurements.
2. Perform calculations as of certain dates such as August 31, 2020 (restatement year) and August 31, 2021 (implementation year). Also, must have the ability to compute monthly.
3. Perform calculations resulting from lease modifications, remeasurements, partial terminations and full terminations.
4. Support rent based on market index, performance, or usage.
5. Support rent payments in advance and arrears.
6. Support rent holidays.
7. Support leases with commencement dates other than beginning of month.
8. Support leases with multiple components, including non-lease components.
9. Support step leases.
10. Allow materiality policies.
11. Support other lease scenarios, such as:
 - a. Sale-leaseback;
 - b. Lease-leaseback;
 - c. Subleases;
 - d. Intercompany leases.

B. Journal Entries

1. Generate lessee and lessor journal entries.
2. Provide options to generate journal entries by portfolio, schedule, and asset-level.
3. Ability to select which journal entries are exported to ERP system.
4. Ability to export journal entries to multiple general ledgers within the same instance of PeopleSoft.
5. Ability to export journal entries to multiple instances of PeopleSoft.

C. Tracking and Reporting

1. Provide for multiple institutions in one instance that can be consolidated.
2. Provide GASB 87 footnote disclosures for each institution.
3. Consolidated footnote disclosures for UT System.
4. Include canned reports.
5. Enable report customization.
6. Track critical dates for remeasurement purposes, such as renewal options and terminations.
7. Provide an audit log of all lease updates.

D. Operations and Support

1. Provide 24/7/365 technical and end-user web-based and telephone support.
2. Provide a single point of contact and escalation procedures for the University to address service request and issues.
3. Provide training and detailed process guides.

4. Adhere to appropriate communications for all scheduled maintenance, changes, and upgrades.

E. Optional Features

1. Serve as a repository to store lease documentation (i.e. contracts, amendments).
2. Provide a means to compare expected payments and income to actual amounts paid or received in PeopleSoft.
3. Provide options for data input, such as lease abstraction services.
4. Ability to integrate with a legacy system.

5.4 Additional Questions Specific to this RFP

Proposer must submit the following information as part of Proposer's proposal:

Vendor Qualifications and Experience (15%)

1. Provide references from three (3) of Proposer's Clients from the past three (3) years for services that are similar in scope, size, and complexity to the Services described in this RFP.

Provide the following for each Client:

- Customer name and address;
 - Contact name with email address and phone number;
 - Time period in which work was performed;
 - Short description of work performed.
2. Has Proposer worked with UT System institutions in the past five (5) years? If "yes," state University Institution name, department name, department contact, and provide a brief description of work performed.
 3. Describe whether Proposer's Solution has been deployed in production at an institution of higher education or an organization of similar size and complexity as the University.
 4. Describe Proposer's core product and service lines, and any optional services Proposer provides.

Solution Proposal (50%)

5. Describe the efforts Proposer intends to take to ensure compliance with Governmental Accounting Standard Board 87.
6. Describe if there are any aspects of GASB 87 that are not supported or are currently in development (i.e. Lessor Accounting or GASB 87 disclosures).
7. Provide an overview of relevant data points used to perform lessee and lessor calculations.
8. Explain if Solution provides any functionality for addressing lease terms that are reasonably certain or any subsequent changes to that assessment.
9. Describe how the Solution processes journal entries and integrates with PeopleSoft. Include examples such as:
 - a. Initial Measurement of Right to Use Asset and Lease Liability;
 - b. Remeasurement resulting from lease modifications or terminations.

- c. Comparison of actual payments to principal and interest calculations.
- 10. Explain how Solution addresses leases with multiple components or assets.
- 11. Describe Proposer's approach to comparing expected entries to actual. (i.e. Expected lease payments vs disbursements from PeopleSoft).
- 12. Explain how the Solution addresses amortization entries generated by PeopleSoft and ensuring those entries are in sync with the Solution for footnote disclosures purposes.
- 13. Describe the varying levels of access based on roles.
- 14. Describe if Solution provides some form of audit trail or tracking when updates are made to a lease.
- 15. Specify if Solution supports any default settings at the systemwide, business unit or asset class level.
- 16. Describe how the Solution handles intercompany leases and elimination entries.
- 17. Provide a sample list of canned reports and available formats for download (i.e. csv, pdf).
- 18. Describe Proposer's approach for consolidating the footnote disclosures for UT System.
- 19. Describe Proposer's training offerings for end-users. State whether in-person training, training videos, or documentation is provided.

Licensing, Maintenance and Support (10%)

Do not provide actual or estimated prices (dollar amounts) in this section (dollar amounts belong to Section #).

- 20. Provide an overview of Proposer's software licensing model on which costs have been based (i.e. number of leases or users).
- 21. Describe the proposed maintenance and support plan, including general service-level commitments offered under Proposer's support agreement.
- 22. Describe any discounts Proposer extends to educational organizations or to state government agencies and provide a published price per sheet for higher education/state government solutions, if one exists.

SECTION 6

PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Proposer Company Name)

To: The University of Texas System

RFP No.: 720-2006 Lease Accounting Software

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the required pursuant to the above-referenced Request for Proposal upon the terms quoted (firm fixed price) below. The University will not accept proposals which include assumptions or exceptions to the work identified in this RFP.

6.1 Pricing for Services Offered (25%)

- A-1. Provide tiered Software cost per license (if applicable) \$ _____
- A-2. Provide tiered Software cost per lease (if applicable) \$ _____

- B. Provide One Time Implementation Cost \$ _____

6.2 Discounts

Describe all discounts that may be available to University, including, educational, federal, state and local discounts.

6.3 Delivery Schedule of Events and Time Periods

Indicate number of calendar days needed to commence the Services from the execution of the services agreement:

_____ Calendar Days

6.4 Payment Terms

University's standard payment terms are "net 30 days" as mandated by the *Texas Prompt Payment Act* (ref. [Chapter 2251, Government Code](#)).

Indicate below the prompt payment discount that Proposer offers:

Prompt Payment Discount: _____% _____ days / net 30 days.

[Section 51.012, Education Code](#), authorizes University to make payments through electronic funds transfer methods. Proposer agrees to accept payments from University through those methods, including the automated clearing house system ("ACH"). Proposer agrees to provide Proposer's banking information to University in writing on Proposer letterhead signed by an authorized representative of Proposer. Prior to the first payment, University will confirm Proposer's banking information. Changes to Proposer's bank information must be communicated to University in writing

at least thirty (30) days before the effective date of the change and must include an [IRS Form W-9](#) signed by an authorized representative of Proposer.

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with [§151.309, Tax Code](#), and [Title 34 TAC §3.322](#). Pursuant to [34 TAC §3.322\(c\)\(4\)](#), University is not required to provide a tax exemption certificate to establish its tax exempt status.

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX ONE
PROPOSAL REQUIREMENTS

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SECTION 1

GENERAL INFORMATION

1.1 Purpose

University is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience providing services in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by University.

By submitting a proposal, Proposer certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such services are to be performed. Proposer also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of the Proposer.

PROPOSER IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

1.2 Inquiries and Interpretations

University may in its sole discretion respond in writing to written inquiries concerning this RFP and mail its response as an Addendum to all parties recorded by University as having received a copy of this RFP. Only University's responses that are made by formal written Addenda will be binding on University. Any verbal responses, written interpretations or clarifications other than Addenda to this RFP will be without legal effect. All Addenda issued by University prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes.

Proposers are required to acknowledge receipt of each Addendum as specified in this Section. The Proposer must acknowledge all Addenda by completing, signing and returning the Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**). The Addenda Checklist must be received by University prior to the Submittal Deadline and should accompany the Proposer's proposal.

Any interested party that receives this RFP by means other than directly from University is responsible for notifying University that it has received an RFP package, and should provide its name, address, telephone and facsimile (**FAX**) numbers, and email address, to University, so that if University issues Addenda to this RFP or provides written answers to questions, that information can be provided to that party.

1.3 Public Information

Proposer is hereby notified that University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

University may seek to protect from disclosure all information submitted in response to this RFP until such time as a final agreement is executed.

Upon execution of a final agreement, University will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act* (ref. [Chapter 552, Government Code](#)). Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under §§[552.101](#), [552.104](#), [552.110](#), [552.113](#), and [552.131](#), *Government Code*.

1.4 Type of Agreement

Contractor, if any, will be required to enter into a contract with University in a form substantially similar to the Agreement between University and Contractor (the "**Agreement**") attached to this RFP as **APPENDIX TWO** and incorporated for all purposes.

1.5 Proposal Evaluation Process

University will select Contractor by using the competitive sealed proposal process described in this Section. Any proposals that are not submitted by the Submittal Deadline or that are not accompanied by required number of completed and signed originals of the HSP will be rejected by University as non-responsive due to material failure to comply with this RFP (ref. **Section 2.5.4** of this RFP). Upon completion of the initial review and evaluation of proposals, University may invite one or more selected Proposers to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Contractor.

University may make the selection of Contractor on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of Contractor on the basis of negotiation with any of the Proposers. In conducting negotiations, University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

University may discuss and negotiate all elements of proposals submitted by Proposers within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, University may defer further action on proposals not included within the competitive range pending the selection of Contractor; provided, however, University reserves the right to include additional proposals in the competitive range if deemed to be in the best interest of University.

After the Submittal Deadline but before final selection of Contractor, University may permit Proposer to revise its proposal in order to obtain the Proposer's best and final offer. In that event, representations made by Proposer in its revised proposal, including price and fee quotes, will be binding on Proposer. University will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. University is not obligated to select the Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to University overall, as determined by University.

University reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of University. Proposer is hereby notified that University will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by University.

1.6 Proposer's Acceptance of RFP Terms

Proposer (1) accepts [a] Proposal Evaluation Process (ref. **Section 1.5** of **APPENDIX ONE**), [b] Criteria for Selection (ref. **2.3** of this RFP), [c] Specifications and Additional Questions (ref. **Section 5** of this RFP), [d] terms and conditions of the Agreement (ref. **APPENDIX TWO**), and [e] all other requirements and specifications set forth in this RFP; and (2) acknowledges that some subjective judgments must be made by University during this RFP process.

1.7 Solicitation for Proposal and Proposal Preparation Costs

Proposer understands and agrees that (1) this RFP is a solicitation for proposals and University has made no representation written or oral that one or more agreements with University will be awarded under this RFP; (2) University issues this RFP predicated on University's anticipated requirements for the Services, and University has made no representation, written or oral, that any particular scope of services will actually be required by University; and (3) Proposer will bear, as its sole risk and responsibility, any cost that arises from Proposer's preparation of a proposal in response to this RFP.

1.8 Proposal Requirements and General Instructions

- 1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.
- 1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of University.
- 1.8.3 University will not provide compensation to Proposer for any expenses incurred by the Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer. Proposer submits its proposal at its own risk and expense.
- 1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by University, at University's sole discretion.
- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFP. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to University, at University's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.
- 1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by University, in University's sole discretion.

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions in Specifications and Additional Questions (ref. **Section 5** of this RFP). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N / A (Not Applicable) or N / R (No Response), as appropriate. Proposer should explain the reason when responding N / A or N / R.

1.9.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by University, in its sole discretion.

1.9.3 Pricing and Delivery Schedule

Proposer must complete and return the Pricing and Delivery Schedule (ref. **Section 6** of this RFP), as part of its proposal. In the Pricing and Delivery Schedule, the Proposer should describe in detail (a) the total fees for the entire scope of the Services; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

University will not recognize or accept any charges or fees to perform the Services that are not specifically stated in the Pricing and Delivery Schedule.

In the Pricing and Delivery Schedule, Proposer should describe each significant phase in the process of providing the Services to University, and the time period within which Proposer proposes to be able to complete each such phase.

1.9.4 Proposer's General Questionnaire

Proposals must include responses to the questions in Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N / A (Not Applicable) or N / R (No Response), as appropriate. Proposer should explain the reason when responding N / A or N / R.

1.9.5 Addenda Checklist

Proposer should acknowledge all Addenda to this RFP (if any) by completing, signing and returning the Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**) as part of its proposal. Any proposal received without a completed and signed Addenda Checklist may be rejected by University, in its sole discretion.

1.9.6 Submission

*Proposer should submit all proposal materials as instructed in **Section 3** of this RFP. RFP No. (ref. **Title Page** of this RFP) and Submittal Deadline (ref. **Section 2.1** of this RFP) should be clearly shown (1) in the Subject line of any email transmitting the proposal, and (2) in the lower left-hand corner on the top surface of any envelope or package containing the proposal. In addition, the name and the return address of the Proposer should be clearly visible in any email or on any envelope or package.*

University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the HSP as required by **Section 2.5** of this RFP. University will not accept proposals submitted by email, telephone or FAX transmission.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to University. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without University's consent, which will be based on Proposer's written request explaining and documenting the reason for withdrawal, which is acceptable to University.

SECTION 2

EXECUTION OF OFFER

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSER'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

- 2.1 Representations and Warranties.** Proposer represents, warrants, certifies, acknowledges, and agrees as follows:
- 2.1.1 Proposer will furnish the Services to University and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting Agreement.
 - 2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
 - 2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in providing the Services.
 - 2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
 - 2.1.5 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances relating to performance of the Services.
 - 2.1.6 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.
 - 2.1.7 Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
 - 2.1.8 Proposer will maintain any insurance coverage required by the Agreement during the entire term.
 - 2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
 - 2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTling ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.
 - 2.1.11 Pursuant to §§[2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the Agreement may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.
 - 2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on University that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.
 - 2.1.13 Pursuant to [Chapter 2270, Government Code](#), Proposer certifies Proposer (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of the Agreement. Proposer acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate.
 - 2.1.14 Pursuant to [Subchapter F, Chapter 2252, Government Code](#), Proposer certifies Proposer is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate.
- 2.2 No Benefit to Public Servants.** Proposer has not given or offered to give, nor does Proposer intend 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 its proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting Agreement, and Proposer may be removed from all proposer lists at University.
- 2.3 Tax Certification.** Proposer is not currently delinquent in the payment of any taxes due under [Chapter 171, Tax Code](#), or Proposer is exempt from the payment of those taxes, or Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting Agreement.

- 2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in [§15.01 et seq., Business and Commerce Code](#), or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 2.5 Authority Certification.** The individual signing this document and the documents made a part of this RFP, is authorized to sign the documents on behalf of Proposer and to bind Proposer under any resulting Agreement.
- 2.6 Child Support Certification.** Under [§231.006, Family Code](#), relating to child support, the individual or business entity named in Proposer's proposal is not ineligible to receive award of the Agreement, and any Agreements resulting from this RFP may be terminated if this certification is inaccurate.
- 2.7 Relationship Certifications.**
- No relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture, or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any member institution of University, on the other hand, other than the relationships which have been previously disclosed to University in writing.
 - Proposer has not been an employee of any member institution of University within the immediate twelve (12) months prior to the Submittal Deadline.
 - No person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. [§669.003, Government Code](#)).
 - All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before University enters into any Agreement resulting from this RFP with Proposer.
- 2.8 Compliance with Equal Employment Opportunity Laws.** Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.9 Compliance with Safety Standards.** All products and services offered by Proposer to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and the *Texas Hazard Communication Act*, [Chapter 502, Health and Safety Code](#), and all related regulations in effect or proposed as of the date of this RFP.
- 2.10 Exceptions to Certifications.** Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this Execution of Offer. All information will be subject to administrative review and approval prior to the time University makes an award or enters into any Agreement with Proposer.
- 2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification.** If Proposer will sell or lease computer equipment to University under any Agreement resulting from this RFP then, pursuant to [§361.965\(c\), Health & Safety Code](#), Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in [Chapter 361, Subchapter Y, Health & Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in [30 TAC Chapter 328, §361.952\(2\), Health & Safety Code](#), states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.
- 2.12 Conflict of Interest Certification.**
- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
 - Proposer's provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
 - Proposer has disclosed any personnel who are related to any current or former employees of University.
 - Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of University in connection with this RFP.

2.13 Proposer should complete the following information:

If Proposer is a Corporation, then State of Incorporation: _____

If Proposer is a Corporation, then Proposer's Corporate Charter Number: _____

RFP No.: 720-2006 Lease Accounting Software

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER [§§552.021 AND 552.023, GOVERNMENT CODE](#), INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER [§559.004, GOVERNMENT CODE](#), INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Submitted and Certified By:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name / Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

(Email Address)

SECTION 3

PROPOSER'S GENERAL QUESTIONNAIRE

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER §§552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER §559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Proposals must include responses to the questions contained in this Proposer's General Questionnaire. Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N / A (Not Applicable) or N / R (No Response), as appropriate. Proposer will explain the reason when responding N / A or N / R.

3.1 Proposer Profile

3.1.1 Legal name of Proposer company:

Address of principal place of business:

Address of office that would be providing service under the Agreement:

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

NOTE: If Proposer is a subsidiary, University prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.

- 3.1.2 State whether Proposer will provide a copy of its financial statements for the past two (2) years, if requested by University.
- 3.1.3 Proposer will provide a financial rating of the Proposer entity and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.
- 3.1.4 Is Proposer currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, Proposer will explain the expected impact, both in organizational and directional terms.
- 3.1.5 Proposer will provide any details of all past or pending litigation or claims filed against Proposer that would affect its performance under the Agreement with University (if any).
- 3.1.6 Is Proposer currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Proposer will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.
- 3.1.7 Proposer will provide a customer reference list of no less than three (3) organizations with which Proposer currently has contracts and / or to which Proposer has previously provided services (within the past five (5) years) of a type and scope similar to those required by University's RFP. Proposer will include in its customer reference list the customer's company name, contact person, telephone number, project description, length of business relationship, and background of services provided by Proposer.

- 3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of University? If yes, Proposer will explain.
- 3.1.9 Proposer will provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to [§231.006, Family Code](#), and will be used for the purpose of determining whether an owner of Proposer with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the *Texas Public Information Act* (ref. [Chapter 552, Government Code](#)), and other applicable law.

3.2 Approach to Project Services

- 3.2.1 Proposer will provide a statement of the Proposer's service approach and will describe any unique benefits to University from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in **Section 5.3** Scope of Work of this RFP.
- 3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of the Agreement.
- 3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:
- 3.2.3.1 Identification of tasks to be performed;
 - 3.2.3.2 Time frames to perform the identified tasks;
 - 3.2.3.3 Project management methodology;
 - 3.2.3.4 Implementation strategy; and
 - 3.2.3.5 The expected time frame in which the services would be implemented.
- 3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in this RFP. Proposer will include samples of reports and documents if appropriate.

3.3 General Requirements

- 3.3.1 Proposer will provide summary resumes for its proposed key personnel who will be providing services under the Agreement with University, including their specific experiences with similar service projects, and number of years of employment with Proposer.
- 3.3.2 Proposer will describe any difficulties it anticipates in performing its duties under the Agreement with University and how Proposer plans to manage these difficulties. Proposer will describe the assistance it will require from University.

3.4 Service Support

Proposer will describe its service support philosophy, how it is implemented, and how Proposer measures its success in maintaining this philosophy.

3.5 Quality Assurance

Proposer will describe its quality assurance program, its quality requirements, and how they are measured.

3.6 Miscellaneous

- 3.6.1 Proposer will provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to University. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.2 Proposer will provide details describing any unique or special services or benefits offered or advantages to be gained by University from doing business with Proposer. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.3 Does Proposer have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Proposer will provide a copy of the plan.

SECTION 4

ADDENDA CHECKLIST

Proposal of: _____
(Proposer Company Name)

To: The University of Texas System

Ref.: Lease Accounting Software

RFP No.: 720-2006

Ladies and Gentlemen:

The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (initial if applicable).

Note: If there was only one (1) Addendum, initial just the first blank after No. 1, not all five (5) blanks below.

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX TWO
SAMPLE AGREEMENT
(INCLUDED AS SEPARATE ATTACHMENT)

APPENDIX THREE

ACCESS BY INDIVIDUALS WITH DISABILITIES

Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements set forth in [1 TAC Chapter 213](#), and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Government Code](#).) To the extent Contractor becomes aware that EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to University, either (1) perform all necessary remediation to make EIRs satisfy the EIR Accessibility Warranty or (2) replace EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to University all amounts University paid under this Agreement.

APPENDIX FOUR
HECVAT
(UNDER SEPARATE ATTACHMENT)

APPENDIX FIVE

CERTIFICATE OF INTERESTED PARTIES (Texas Ethics Commission Form 1295)

This is a sample Texas Ethics Commission's FORM 1295 – CERTIFICATE OF INTERESTED PARTIES. If not exempt under [Section 2252.908\(c\), Government Code](https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html), Contractor must use the Texas Ethics Commission electronic filing web page (at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html) to complete the most current Certificate of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and University. **The Certificate of Interested Parties will be submitted only by Contractor to University with the signed Agreement.**

CERTIFICATE OF INTERESTED PARTIES		FORM 1295		
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		OFFICE USE ONLY		
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.				
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.				
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.				
4	Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
			Controlling	Intermediary
5 Check only if there is NO Interested Party. <input type="checkbox"/>				
6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.				
_____ Signature of authorized agent of contracting business entity				
AFFIX NOTARY STAMP / SEAL ABOVE				
Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20 _____, to certify which, witness my hand and seal of office.				
_____ Signature of officer administering oath		_____ Printed name of officer administering oath		_____ Title of officer administering oath
ADD ADDITIONAL PAGES AS NECESSARY				

APPENDIX SIX

INFORMATION SECURITY THIRD-PARTY ASSESSMENT SURVEY

1. Describe how Solution would securely transfer information between your platform and the campus ERP system (e.g. HTTPS, SFTP)?
2. Describe how Solution supports 2-factor authentication (MFA)?
3. Describe how Solution could be integrated with a ticketing system to allow for onboarding/offboarding of users.
4. Describe how Solution supports a single sign-on log-in system?
5. Describe how Solution supports the following data transfer process interfaces: scheduled, automated, and ad-hoc.
6. Describe how Solution is compliant with all Americans with Disabilities Act (ADA) requirements from the Office for Civil Rights?
7. Describe Solution's annual system uptime.
8. Describe Solution's process for securely deleting customer (lease) data from the system.
9. Describe Solution backups and recovers system and customer data including recovery point objective and recovery time objective thresholds.
10. What are the maximum number of unique leases Solution supports (per customer instance)?
11. Describe how Solution supports responsive display formats for multiple types of devices (i.e. mobile, laptop, big screens).
12. Describe Solution's response time (preferability in seconds) for data entry into the system?

AGREEMENT BETWEEN UNIVERSITY AND CONTRACTOR

This Agreement between University and Contractor (“**Agreement**”) is made and entered into effective _____, 2020 (the “**Effective Date**”), by and between **The University of Texas System**, an agency and institution of higher education established under the laws of the State of Texas (“**University**”), for and on its own behalf and on behalf of all institutions and entities included in the University as set forth in Section 65.02, Texas Education Code (collectively, “**Institutions**” and each an “**Institution**,” and _____ corporation, Federal Tax Identification Number _____ (“**Contractor**”).

1. **Scope of Work**

Contractor will perform services within the scope of work (“**Work**” or “**Services**”) set forth in **Exhibit A**, Scope of Work, attached and incorporated for all purposes, only on the request of an Institution (the “**Requesting Institution**”). The Institutions include, but are not limited to, the following: The University of Texas at Arlington, The University of Texas at Austin, The University of Texas at Dallas, The University of Texas at El Paso, The University of Texas of the Permian Basin, The University of Texas Rio Grande Valley, The University of Texas at San Antonio, The University of Texas at Tyler, The University of Texas Southwestern Medical Center, The University of Texas Medical Branch at Galveston, The University of Texas Health Science Center at Houston, The University of Texas Health Science Center at San Antonio, The University of Texas MD Anderson Cancer Center, The University of Texas Health Science Center at Tyler, The University of Texas System Administration. Time is of the essence in connection with this Agreement and each Order Form. Neither University nor any Requesting Institution will have any obligation to accept late performance or waive timely performance by Contractor.

Prior to Contractor’s commencement of any Services for a Requesting Institution, the Contractor and the Requesting Institution must complete and enter into an Order Form. Each Institution shall purchase Services via a separate Order Form. All of the terms and conditions contained in this Agreement are incorporated into each Order Form for all purposes. The terms and conditions of this Agreement will control in the event of any conflict between the terms and conditions of an Order Form and the Agreement.

Contractor acknowledges that this Agreement is a non-exclusive agreement. Neither University or an Institution is obligated to request Services from or enter into an Order Form with Contractor under this Agreement.

2. **Term**

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.

3. **Payment.**

A Requesting Institution will pay Contractor for the performance of Services in accordance with **Exhibit C**, Payment for Services and the Order Form between Contractor and that Requesting Institution, beginning at the time that Requesting Institution implements and launches the Services. Such an Order Form must identify all fees Contractor will charge the Requesting Institution, and all invoices for payment that Contractor will submit, under that Order Form. A Requesting Institution will pay such Contractor invoices in compliance with the Texas Prompt Payment Act set forth in Chapter 2251 of the *Texas Government Code*. The Parties acknowledge and agree that no fee shall be paid by an Institution to Contractor until they enter into an Order Form and begin participation in the Services under this Agreement and that Order Form.

The amount invoiced by Contractor under Order Forms entered into under this Agreement will include all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of this Agreement.

The total amount paid by Requesting Institutions to Contractor under all of the Order Forms entered into under this Agreement shall not exceed \$1,000,000 without the approval of The University of Texas System Board of Regents.

Fees are due and payable as per the terms of this Agreement in compliance with **Exhibit B**, Order Form.

[Section 51.012, Texas Education Code](#), authorizes the Requesting Institutions to make payments through electronic funds transfer methods. Contractor agrees to accept payments from the Requesting Institutions through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor’s

banking information to University and each Requesting Institution in writing on Contractor letterhead signed by an authorized representative of Contractor. Prior to the first payment, University and each Requesting Institution will confirm Contractor's banking information. Changes to Contractor's bank information must be communicated to University and each Requesting Institution in accordance with Section 11 in writing at least thirty (30) days before the effective date of the change and must include an IRS Form W-9 signed by an authorized representative of Contractor.

4. **Prompt Payment Discount.** Notwithstanding any other provision of this Agreement, University and the Requesting Institutions are entitled to a discount of ___% (**Prompt Payment Discount**) off of each payment that University or a Requesting Institution submits within ___ days after University's or a Requesting Institution's receipt of Contractor's invoice for that payment.

5. **Tax Exemption.** University and the Requesting Institutions (State agencies) are exempt from Texas Sales & Use Tax on Work in accordance with [§151.309, Texas Tax Code](#) and [34 Texas Administrative Code \(TAC\) §3.322](#). Pursuant to [34 TAC §§3.322\(c\)\(4\) and \(g\)\(3\)](#), this Agreement is sufficient proof of University's and the Requesting Institutions' tax exempt status and neither the University or the Requesting Institutions are required to provide further evidence of their exempt status.

6. **Contractor's Obligations.**

6.1 Contractor will perform Work in compliance with (a) all federal, state or local, laws, statutes, regulations and ordinances (collectively, **Applicable Laws**), and (b) the Board of Regents of The University of Texas System *Rules and Regulations* (<http://www.utsystem.edu/offices/board-regents/regents-rules-and-regulations>) the policies of The University of Texas System (<http://www.utsystem.edu/board-of-regents/policy-library>); and the applicable institutional rules, regulations and policies of University and the Requesting Institutions (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.

6.2 Contractor represents and warrants that (a) it will use commercially reasonable efforts to perform Work in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business, and (b) all Work to be performed will be of the quality that prevails among similar businesses engaged in providing similar services in major United States urban areas under the same or similar circumstances

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

6.4 University and the Requesting Institutions are at all times relying on Contractor's skill and knowledge in performing Work. Contractor represents and warrants that Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will not be in any way diminished by reason of any approval by University or the Requesting Institutions. Contractor will not be released from any liability by reason of any approval by University or the Requesting Institutions.

6.5 Contractor will, at its own cost, correct all material defects in Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in Work within a reasonable time, then University or a Requesting Institution 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 or a Requesting Institution may have at law or in equity.

6.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will assign to the Project a designated representative who will be responsible for administration and coordination of Work.

6.7 Contractor represents and warrants it is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business

in the State of Texas; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

- 6.8 Contractor represents and warrants that all of Contractor's Personnel contributing to Work Material (ref. **Section 24**) under this Agreement will be required to (i) acknowledge in writing the ownership of Contractor (for the benefit of University and the Requesting Institutions) of Work Material produced by 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.
- 6.9 Contractor represents and warrants that: (i) 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 and the Requesting Institutions); (ii) University and the Requesting Institutions will receive free, good and clear title to all Work Material developed under this Agreement; (iii) Work Material and the intellectual property rights protecting Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) 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 Work Material will not violate the rights of any third parties in Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.
7. **Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Contractor certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
8. **Tax Certification.** If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#), then Contractor certifies it is not currently delinquent in the payment of any taxes due under Chapter 171, Contractor is exempt from the payment of those taxes, or Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
9. **Payment of Debt or Delinquency to the State.** Pursuant to [§§2107.008](#) and [2252.903, Texas Government Code](#), Contractor agrees any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency Contractor owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.
10. **Loss of Funding.** Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If Legislature fails to appropriate or allot necessary funds, or Board fails to allocate necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond University's control.
- Performance by the Requesting Institutions under the Order Forms that the Requesting Institutions enter into with Contractor under this Agreement may be dependent upon the appropriation and allotment of funds by the Legislature and/or allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds for an Order Form, or if the Board fails to allocate the necessary funds for an Order Form (a "Non-Funded Order Form") then the Requesting Institution that is a party to that Non-Funded Order Form shall issue written notice to Contractor and the Requesting Institution may terminate its further participation under the Non-Funded Order Form without further duty or obligation under that Order Form. Provided, however, that such termination of a Non-Funded Order Form shall not terminate or otherwise affect any other Order Forms entered into under this Agreement. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University and the Requesting Institutions.
11. **Notices.** Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications required or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is provided below), or email (to the extent an email address is provided below) as indicated 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 provided below) or email (to the extent an email address is provided below), when received:

If to University: The University of Texas System Administration
210 W. 7th Street, Austin, Texas 78701
Attention:

Email:

with copy to: The University of Texas System Administration
210 W. 7th Street, Austin, Texas 78701
Attention: Scott C. Kelley, Ed.D.,
Executive Vice Chancellor of Business Affairs

If to Contractor:

If to a Requesting Institution: The address for the Requesting Institution that is documented in its Order Form with Contractor.

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 or a Requesting Institution pursuant to [§2251.054, Texas Government Code](#), then Contractor will send that notice:

to University as follows:

The University of Texas System Administration
210 W. 7th Street, Austin, Texas 78701
Attention:
Email:

with copy to: The University of Texas System Administration
210 W. 7th Street, Austin, Texas 78701
Attention: Scott C. Kelley, Ed.D.,
Executive Vice Chancellor of Business Affairs

to that the Requesting Institution at the address for the Requesting Institution that is documented in its Order Form with Contractor, or other person or address as may be given in writing by University or a Requesting Institution to Contractor in accordance with this Section.

12. **State Auditor's Office.** Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. §§[51.9335\(c\)](#), [73.115\(c\)](#) and [74.008\(c\)](#), *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
13. **Venue; Governing Law.** Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.
14. **Breach of Contract Claims.**

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 the Order Forms 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, a Requesting Institution, and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

- 14.1. Contractor's claims for breach of this Agreement or an Order Form 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 and all applicable Requesting Institutions 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 or a Requesting Institution 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 or a Requesting Institution 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.
 - 14.2. If the parties are unable to resolve their disputes under **Section 14.1** 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 or an Order Form by University or a Requesting Institution.
 - 14.3. 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, a Requesting Institution's, or the state's sovereign immunity to suit and (ii) neither University nor any Requesting Institution have waived their right to seek redress in the courts.
 - 14.4. 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.
 - 14.5. University, the Requesting Institutions, and Contractor agree that any periods provided in this Agreement or an Order Form for notice and cure of defaults are not waived.
- 15. Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Work and payments will be available to University and the Requesting Institutions or their authorized representatives during business hours and will be retained for four (4) years after final payment or abandonment of the Work, unless University or a Requesting Institution otherwise instructs Contractor in writing.
- 16. Insurance.**
- 16.1 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:
 - 16.1.1 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. of the information page of the Workers' Compensation policy the state in which Work is to be performed for University and the Requesting Institutions.

16.1.2 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.

16.1.4 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. The Umbrella/Excess Liability policy will be excess over and at least as broad as the underlying coverage as required under **Sections 16.1.1** Employer's Liability; **16.1.2** Commercial General Liability.

16.1.6 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.

16.1.9 Cyber Liability Insurance with limits of not less than \$10,000,000 for each wrongful act. This policy must cover:

- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University or Requesting Institution data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
- Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Liability for technological products and services;
- PCI fines, fees, penalties and assessments;
- Cyber extortion payment and response costs;
- First and Third Party Business Interruption Loss resulting from a network security failure;
- Liability for technological products and services;
- Costs of restoring, updating or replacing data; and
- Liability losses connected to network security, privacy, and media liability.

If this policy is written on a claims-made basis, (a) the "retroactive date" must be prior to the commencement of work under this Agreement; and (b) if this policy is cancelled, terminated or non-renewed at any time during the Term, Contractor will purchase an "extended reporting period" for at least a period of two (2) years beyond the termination or expiration of the Term.

Contractor's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

16.2 Contractor will deliver to University:

16.2.1 After the execution and delivery of this Agreement and prior to the performance of any Work by Contractor, evidence of insurance on a Texas Department of Insurance (TDI) approved certificate form (the Acord form is a TDI-approved form) verifying the existence and actual limits of all required insurance policies; and, if the coverage period shown on the current certificate form ends during the Term, then prior to the end of the coverage period, a new certificate form verifying the continued existence of all required insurance policies.

16.2.1.1 **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 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.

16.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System and the Requesting Institutions. **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 and the Requesting Institutions. 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 16**.

16.2.1.3 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.

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

Name:

Email:

16.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University or the Requesting Institutions. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University and the Requesting Institutions in writing

17. **Indemnification.**

17.1 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 THE UNIVERSITY OF TEXAS SYSTEM, THE REQUESTING INSTITUTIONS, 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, 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 OR OF AN ORDER FORM 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.

- 17.2 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 AND THE REQUESTING INSTITUTIONS WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY AND THE REQUESTING INSTITUTIONS AGREE TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
18. **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy at <http://www.utsystem.edu/board-of-regents/policy-library/policies/int180-conflicts-interest-conflicts-commitment-and-outside->, University's Standards of Conduct Guide at : <https://www.utsystem.edu/documents/docs/policies-rules/ut-system-administration-standards-conduct-guide>, and applicable state ethics laws and rules at <https://www.utsystem.edu/offices/systemwide-compliance/ethics>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University or Requesting Institution employees to violate University's Conflicts of Interest Policy, 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.
- Further, Contractor agrees to comply with [§2252.908, Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and [1 TAC §§46.1 through 46.5 \(Disclosure of Interested Parties Regulations\)](#), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and University and the Requesting Institutions with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html.
19. **Undocumented Workers.** The *Immigration and Nationality Act (8 USC §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 CFR §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, and the Requesting Institutions may terminate their Order Forms, in accordance with **Section 26**. 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.
20. **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 and the Requesting Institutions may continue to use the Services during the occurrence.
21. **Entire Agreement; Modifications.** This Agreement (including all exhibits, schedules, supplements and other attachments (collectively, **Exhibits**)) 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 its subject matter. 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 University and Contractor. All Exhibits are attached to this Agreement and incorporated for all purposes.

Each Order Form supersedes all prior agreements, written or oral, between Contractor and the Requesting Institution executing that Order Form and will constitute the entire agreement and understanding between the Contractor and that Requesting Institution with respect to its subject matter. Each Order Form and each of its provisions will be binding upon Contractor and the Requesting Institution executing that Order Form, and may not be waived, modified, amended or altered, except by a writing signed by that Requesting Institution and Contractor.

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

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

24. Ownership and Use of Work Material.

24.1 All data, reports, and other materials prepared by Contractor or any subcontractors in connection with Work (collectively, **Work Material**), whether or not accepted or rejected by University or a Requesting Institution, are the sole property of University and the Requesting Institutions and for their exclusive use and re-use at any time without further compensation and without any restrictions.

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

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

24.4 Work Material will not be used or published by Contractor or any other party unless expressly authorized by University and the Requesting Institutions in writing. Contractor will treat all Work Material as confidential.

24.5 All title and interest in Work Material will vest in University and the Requesting Institutions and will be deemed to be work made for hire and made in the course of Work rendered under this Agreement. To the extent that title to any Work Material may not, by operation of law, vest in University and the Requesting Institutions or Work Material may not be considered works made for hire, Contractor irrevocably assigns, conveys and transfers to University, the Requesting Institutions, and their successors, licensees and assigns, all rights, title and interest worldwide in and to 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 Work Material which cannot be assigned, Contractor agrees to waive enforcement worldwide of the rights against University, the Requesting Institutions and their successors, licensees, assigns, distributors and customers or, if necessary, to exclusively license the rights, worldwide to University and the Requesting Institutions with the right to sublicense. These rights are assignable by University.

24.6 Contractor IP is the sole property of Contractor (or its licensor) and Contractor (or its licensor) will at all times retain sole and exclusive title to and ownership of Contractor IP. Contractor grants University and the Requesting Institutions a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to use Contractor IP in connection with the Work and Contractor's services related to the Work. "**Contractor IP**" means all tools, software and programs owned by Contractor (licensed to Contractor by a third party licensor) that (1) existed prior to the Effective Date and the commencement of the Work; (2) are not related to the Work or to Contractor's services in connection with the Work; or (3) were created by Contractor (or its licensor) totally separate from the Work or Contractor's services in connection with the Work.

24.7 University and the Requesting Institutions grant Contractor a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to the Work Product Improvements to Contractor IP. **"Work Product Improvements to Contractor IP"** means Work Material comprising an improvement, enhancement or modification to Contractor IP, whether or not patentable, copyrightable as a derivative work, or otherwise protectable as intellectual property.

25. **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 the Requesting Institutions, 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. 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 or the Requesting Institutions 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 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 and the Requesting Institutions' computer systems, including UTS165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>. At the request of University or a Requesting Institution, Contractor agrees to provide University and a Requesting Institution with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

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

25.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement or an Order Form, for any reason, all University Records created or received from or on behalf of University or the Requesting Institution under such an Order Form will be (1) returned to University and that Requesting Institution, 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 and all applicable Requesting Institutions with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University and all applicable Requesting Institutions in writing the destruction of University Records.

25.3 **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 25.3**.

25.4 **Press Releases.** Except when defined as part of 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 or a Requesting Institution in connection with this Agreement or any Order Form, or release any information relative to this Agreement or any Order Form for publication, advertisement or any other purpose without the prior written approval of University and the applicable Requesting Institution.

25.5 **Public Information.** University and the Requesting Institutions strictly adhere 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 §§[552.002](#) and [2252.907](#), *Texas Government Code*, and at no additional charge to University or the Requesting Institutions, Contractor will make any information created or exchanged with University and the Requesting Institutions pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University and the Requesting Institutions that is accessible by the public.

- 25.6 **Termination.** In addition to any other termination rights in this Agreement or any Order Form and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations in this Section, University may immediately terminate this Agreement without notice or opportunity to cure. In addition to any other termination rights in an Order Form and any other rights at law or equity, if a Requesting Institution reasonably determines that Contractor has breached any of the restrictions or obligations in this Section, that Requesting Institution may immediately terminate its Order Forms without notice or opportunity to cure.
- 25.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

26. Default and Termination

- 26.1 In the event of a material failure by a party to this Agreement to perform in accordance with its terms (**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 (15-day) period.

In the event of a material failure Contractor to perform in accordance with the terms of an Order Form, the Requesting Institution under that Order Form may terminate the Order Form 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.

- 26.2 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 paragraph, Contractor will be entitled to payment of an amount that will compensate Contractor for 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 or an Order Form 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.

A Requesting Institution may, without cause, terminate its Order Form(s) at any time upon giving seven (7) days' advance written notice to Contractor. Upon termination pursuant to this paragraph, Contractor will be entitled to payment of an amount that will compensate Contractor for Work satisfactorily performed under that Order Form 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 the terminating Requesting Institution. Notwithstanding any provision in this Agreement or an Order Form to the contrary, a Requesting Institution will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor under a terminated Order Form after the date of the termination notice, that could have been avoided or mitigated by Contractor.

- 26.3 Termination under **Sections 26.1** or **26.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.
- 26.4 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.
- 26.5 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.

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

28. **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.
29. **Limitation of Liability.** EXCEPT FOR UNIVERSITY'S OR THE REQUESTING INSTITUTIONS' OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES NEITHER UNIVERSITY OR ANY REQUESTING INSTITUTION WILL HAVE ANY LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT OR ANY ORDER FORM. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY OR ANY REQUESTING INSTITUTION 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 THE UNIVERSITY OF TEXAS SYSTEM, ANY REQUESTING INSTITUTION, OR ANYONE CLAIMING UNDER UNIVERSITY OR ANY REQUESTING INSTITUTION 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 OR ANY ORDER FORM.
30. **Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform Work under this Agreement or an Order Form 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 Work under this Agreement or an Order Form. Prior to commencing Work, Contractor will (1) provide University and the applicable Requesting Institutions with a list (**List**) of all individuals who may be assigned to perform Work on University's or the Requesting Institutions' premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Contractor will determine on a case-by-case basis whether each individual assigned to perform Work is qualified to do so. Contractor will not knowingly assign any individual to provide services on University's or any Requesting Institution's premises 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 Work on University's or any Requesting Institution's premises.
- Prior to commencing performance of 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 on the List.
31. **Limitations.** THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF UNIVERSITY AND THE REQUESTING INSTITUTIONS' (STATE AGENCIES) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S OR THE REQUESTING INSTITUTIONS' 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, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY OR THE REQUESTING INSTITUTIONS EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
32. **Survival of Provisions.** No expiration or termination of this Agreement or an Order Form will relieve any party of any obligations under this Agreement or the Order Form that by their nature survive expiration or termination.
33. **Relationship of the Parties.** For all purposes of this Agreement and the Order Forms and notwithstanding any provision of this Agreement or the Order Forms to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University or the Requesting Institutions. Contractor will not bind nor attempt to bind University or the Requesting Institutions 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.
34. **External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Agreement and the Order Forms (**External Terms**). External Terms are null and void and will have no effect under this Agreement or the Order Forms, even if University, the Requesting Institutions, or their employees, contractors, or agents express assent or agreement to External Terms. External Terms include any shrinkwrap, clickwrap, browswrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University, the Requesting Institutions, or their employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.

35. **Historically Underutilized Business Subcontracting Plan.** Contractor will use good faith efforts to subcontract work performed under this Agreement in accordance with the Historically Underutilized Business Subcontracting Plan (HSP) (ref. [Exhibit D](#)). Except as specifically provided in the HSP, Contractor will not subcontract any of its duties or obligations under this Agreement, in whole or in part. This Agreement is subject to [34 TAC §20.285](#). Contractor will comply with all of its duties and obligations under [34 TAC §20.285](#). In addition to other rights and remedies, University may exercise all rights and remedies authorized by [34 TAC §20.285](#).
- 35.1 **Changes to the HSP.** If at any time during the Term, Contractor desires to change the HSP, before the proposed changes become effective (a) Contractor must comply with [34 TAC §20.285](#); (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 21** to replace the HSP with the revised subcontracting plan.
- 35.2 **Expansion of Work.** If University expands the scope of 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 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 §20.285](#) 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 §20.285](#), Contractor will be deemed to be in breach of this Agreement under **Section 26** and will be subject to any remedial actions provided by Applicable Laws, including [Chapter 2161, Texas Government Code](#), and [34 TAC §20.285](#). University may report nonperformance under this Agreement to the SPSS in accordance with [34 TAC §§20.285\(g\)\(5\), 20.585](#) and [20.586](#).
36. **Enforcement.** Contractor agrees and acknowledges that University and the Requesting Institutions are entering into this Agreement and the Order Forms in reliance on Contractor's special and unique knowledge and abilities with respect to performing Work. Contractor's Services provide a peculiar value to University and the Requesting Institutions. University and the Requesting Institutions 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 or the Order Forms will cause University and the Requesting Institutions irreparable injury and damage. Contractor, therefore, expressly agrees that University and the Requesting Institutions 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 or an Order Form.
37. **Access by Individuals with Disabilities.** Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University and the Requesting Institutions under this Agreement and the Order Forms (**EIRs**) comply with applicable requirements in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to University or the Requesting Institutions, 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. If Contractor fails or is unable to do so, University may terminate this Agreement and the Requesting Institutions may terminate their Order Form(s) and, within thirty (30) days after such termination, Contractor will refund to (a) University all amounts University paid under this Agreement and (b) the Requesting Institutions all amounts the Requesting Institutions paid under the terminated Order Forms. Contractor will provide all assistance and cooperation necessary for performance of accessibility testing conducted by University, the Requesting Institutions, or University's or the Requesting Institutions' third party testing resources, as required by [1 TAC §213.38\(g\)](#).
38. **Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2270, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement or of any Order Form. Contractor acknowledges this Agreement and all Order Forms may be terminated and payment withheld if this certification is inaccurate.
39. **Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business

with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement and all Order Forms may be terminated and payment withheld if this certification is inaccurate.

40. **Websites and Mobile Applications.** As required by [Section 2054.517, Texas Government Code](#), before deploying any website or mobile application included as part of the Work, Contractor must submit to the University's information security officer the information required under policies adopted by the University to protect the privacy of individuals by preserving the confidentiality of information processed by the website or application. At a minimum, the information submitted by Contractor must describe:
- (1) the architecture of the website or application;
 - (2) the authentication mechanism for the website or application; and
 - (3) the administrator level access to data included in the website or application.

Additionally, Contractor will provide all assistance and cooperation necessary for University to subject the website or mobile application to a vulnerability and penetration test conducted internally by University or by an independent third party, as required by [Section 2054.517, Texas Government Code](#).

41. **Project Notifications and Reports.**

Contractor will, upon execution of any Order Form (Exhibit B) under this Agreement, send a fully executed copy of that Order Form to:

Contractor Reports

In addition to the reports and deliverables required under an Order Form between the Contractor and a Requesting Institution who contracts for specific Services, Contractor shall, on an annual basis, submit a report to the University detailing all Services performed for any Institution, which will include the status of such Service (open / closed), and total fees billed.

42. **University Institutions.** Contractor agrees that Requesting Institutions may obtain the Services under this Agreement via execution of an Order Form. By executing an Order Form, Contractor and each Requesting Institution acknowledge and agree that Contractor and that Requesting Institution are bound by the terms and conditions under this Agreement and the Order Form solely for the purposes of the Services to be provided by Contractor to that Requesting Institution under that Order Form. With regard to Order Forms entered into by Contractor and a Requesting Institution: (i) all references to University in this Agreement shall be deemed to mean the Requesting Institution which entered into the Order Form, (ii) each Order Form shall be subject to the terms and conditions of this Agreement and legally binding exclusively upon the Requesting Institution entering into such Order Form and Contractor, and (iii) the termination of an Order Form by Contractor or that Requesting Institution shall not impact the validity of any other Order Form.

43. **Cybersecurity Training Program.** If Contractor and/or its subcontractors, officers, or employees will have an account on a state computer system (for example, to access a database on that system), then pursuant to Section 2054.5192, *Texas Government Code*, Contractor and its subcontractors, officers, and employees must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* and selected by the University. The cybersecurity training program must be completed by Contractor and its subcontractors, officers, and employees during the term and any renewal period of this Agreement. Contractor shall verify completion of the program to the University.

44. **Entire Agreement: Precedence.** This Agreement (including all exhibits, Order Forms, supplements and other attachments (collectively, Attachments)) supersedes all prior agreements, written or oral, between Contractor and University and the Requesting Institutions and will constitute the entire Agreement and understanding between the parties with respect to its subject matter. 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 Contractor and University. All Attachments are attached to this Agreement and incorporated for all purposes. Each of the Order Forms, Amendments and Addenda, which may be attached hereto are incorporated by reference into this Agreement as if fully stated herein. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any term or condition of any exhibit hereto or any transactional or other document issued in connection herewith, any such conflict will be resolved by giving precedence in the following order (a) this Agreement, as may be amended; (b) the Attachments to this Agreement; and (c) the Order Forms, as may be amended from time to time, and any exhibits or attachments thereto.

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

AGREED TO AND SIGNED BY THE PARTIES:

The University of Texas System

CONTRACTOR

By: _____

By: _____

Name: Scott C. Kelley, Ed.D

Name:

Title: Executive Vice Chancellor,
Business Affairs

Title:

Date: _____

Date:

Attached:

EXHIBIT A – Scope of Work

EXHIBIT B – Sample Order Form

EXHIBIT C – Payment for Services

EXHIBIT D – HUB SUBCONTRACTING PLAN

EXHIBIT A
SCOPE OF WORK

EXHIBIT B
SAMPLE ORDER FORM

EXHIBIT C

PAYMENT FOR SERVICES

EXHIBIT D

HUB SUBCONTRACTING PLAN

(TO BE COMPLETED WHEN CONTRACTOR IS SELECTED)



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Office of Information Security
210 W. 7th Street
Austin, Texas 78701
512-499-4389
WWW.UTSYSTEM.EDU

The University of Texas System (UT System) Administration leverages the Higher Education Cloud Vendor Assessment Tool (HECVAT) Lite in evaluating third party products/services that will access, process, or host university data.

Instructions and licensing information may be found within this workbook. Additional information about the HECVAT tool can be found on the Educause.edu website located here: <https://library.educause.edu/resources/2016/10/higher-education-cloud-vendor-assessment-tool>.

For UT System information security related questions, please contact either: Al Arboleda – aarboleda@utsystem.edu or Tod Maxwell – tmaxwell@utsystem.edu.

[Proceed to the next tab, Instructions.](#)

These instructions are for
This worksheet should not
submit robust security sa
Institution's assessment |

Document Layout

There are five main sections
more detail. This document
completed it can be populated
questions are nested and
in the correct order improve
validation) in column (

General Information
Qualifiers
Documentation
Company Overview
Safeguards

In sections where vendor
Answers and Additional Information
sometimes C and D are shown
down box and any supporting
looking for the answer to
questions, check this column
question. Use the "Additional

Figure 1:

Optional Safeguards

Not all questions are relevant depending on the scope and become optional have the

Figure 2:

BCP - Optional based on QI	
BCPL-01	Describe or provide a refer

Definitions and Data

Institution

Institution Data Zone

Vendor Data Zone

Customers from different Vendors may handle data Data Zone.

As a vendor, if your security questionnaire in the context still use vendor responses

Data Reporting

To update data in the Report assessed a preliminary sc

[Proceed to the next task](#)

Instructions

vendors interested in providing the Institution with a software and/or a service. It must be completed by an Institution entity. The purpose of this worksheet is for the vendor to safeguard information in regards to the product (software/service) being assessed in the process.

Sections of the Higher Education Cloud Vendor Assessment Tool, all listed below and outlined in the document is designed to have the first two sections populated first; after the Qualifiers section is completed, sections can be completed in any order. Within each section, answer each question top-to-bottom. Some questions may be blocked out via formatting based on previous answers. Populating this document saves time and increases efficiency.

Do not overwrite selection values (data)

Section 1 of the Questionnaire tab

This section is self-explanatory; product specifics and contact information. **GNRL-01 through GNRL-10 should be populated by the Vendor.** GNRL-11 and GNRL-12 are for Institution use only.

Populate this section **completely** before continuing. Answers in this section can determine which sections will be required for this assessment. By answering "No" to Qualifiers, their matched sections become optional and are highlighted in orange.

Focused on external documentation, the Institution is interested in the frameworks that guide your security strategy and what has been done to certify these implementations.

This section is focused on company background, size, and business area experience.

The remainder of the document consists of various safeguards, grouped generally by section.

When input is required there are only one or two columns that need modification, vendor information, columns C and D respectively (see Figure 1 below). You will see that columns are separate and other times are merged. If they are separate, C will be a selectable, drop-down menu and information should be added to column D. If C and D are merged, the question is to be answered in narrative form. At the far right is a column titled "Guidance". After answering a question, click the "Submit" button in column E to ensure you have submitted information/documentation to sufficiently answer the question. If you click "No" in column C, you will see "Provide a brief description" in column E.

C	D	E
Vendor Answers	Additional Information	Guidance
No		Provide a brief description.

Based on Qualifiers

vant to all vendors. Qualifiers are used to make whole sections optional to vendors of product usage and the data involved in the engagement being assessed. Sections that are section titles and questions highlighted in orange (see Figure 2).

QUALIFIER response.	Vendor Answers	Additional Information
reference to your Business Continuity Plan.		

Zones

Any school, college, or university

The country/region in which an Institution is located, including all laws and regulations in-scope within that country/region.

The country/region in which a vendor is headquartered and/or serves its products/services, including all laws and regulations in-scope within that country/region.

In regions that may expect vary protections of data (e.g. GDPR), this is the Institution Data Zone. In regions that may expect vary protections of data (e.g. GDPR), this is the Vendor Data Zone.

Security practices vary based on your region of operation, you may want to populate the text for each security zone (strategy). That said, Institutions from different data zones may also have security practices that differ from other state Data Zones. If your security practices are the same across all regions of operation, you may want to populate the text for each security zone (strategy).

Example A: If vendor ABC is headquartered and stores data in Canada, and provides services to only customers in Canada, ABC should state "Canada" in both Data Zone fields.

Example B: If vendor ABC is headquartered and stores data in Canada, and additionally provides services to customers in the United Kingdom, ABC may want to assure customers in the United Kingdom that their data is handled properly for their region. In that case, ABC should state "Canada" in the Vendor Data Zone and "United Kingdom" in the Institution Data Zone.

Example C: If your security strategy is broad and doesn't fit this statement model, you may want to provide a brief summary in each field and the Institution's Security Analyst can assess your security practices.

Support tabs, click Refresh All in the Menu tab. Input provided in the Questionnaire tab is subject to pending Institution's Security Analyst review.

[Questionnaire](#).

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UTS Cloud Vendor Assessment Tool - Lite

HEISC Shared Assessments Working Group

DATE-01	Date
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General Information

In order to protect the institution and its systems, vendors whose products and/or services use or store institution data is used, this is an all-encompassing term including at least data and metadata. Answers should be provided for all protected information and comply with institution policy, state, and federal law. This is in

GNRL-01 through GNRL-15; populated by Vendor

GNRL-01	Vendor Name
GNRL-02	Product Name
GNRL-03	Product Description
GNRL-04	Web Link to Product Privacy Notice
GNRL-05	Vendor Contact Name
GNRL-06	Vendor Contact Title
GNRL-07	Vendor Contact Email
GNRL-08	Vendor Contact Phone Number
GNRL-09	Vendor Data Zone
GNRL-10	Institution Data Zone

GNRL-11 and GNRL-12; populated by Institution's Security Office

GNRL-11	UT System Information Security Contacts
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Instructions

Step 1: Complete each section answering each set of questions in order from top to bottom to the institution according to institutional procedures.

Documentation

DOCU-01	Have you undergone a SSAE 16 audit?
DOCU-02	Have you completed the Cloud Security Alliance (CSA) self assessment or CAIQ?
DOCU-03	Have you received the Cloud Security Alliance STAR certification?
DOCU-04	Do you conform with a specific industry standard security framework? (e.g. NIST Cybersecurity Framework, ISO 27001, etc.)
DOCU-05	Are you compliant with FISMA standards?

DOCU-06	Does your organization have a data privacy policy?
Company Overview	
COMP-01	Describe your organization's business background and ownership structure, including all parent and subsidiary relationships.
COMP-02	Describe how long your organization has conducted business in this product area.
COMP-03	Do you have existing higher education customers?
COMP-04	Have you had a significant breach in the last 5 years?
COMP-05	Do you have a dedicated Information Security staff or office?

COMP-06	Do you have a dedicated Software and System Development team(s)? (e.g. Customer Support, Implementation, Product Management, etc.)
COMP-07	Use this area to share information about your environment that will assist those who are assessing your company data security program.
Application/Service Security	
HLAP-01	Do you support role-based access control (RBAC) for end-users?
HLAP-02	Do you support role-based access control (RBAC) for system administrators?
HLAP-03	Can employees access customer data remotely?
HLAP-04	Can you provide overall system and/or application architecture diagrams including a full description of the data communications architecture for all components of the system?

HLAP-05	Does the system provide data input validation and error messages?
HLAP-06	Do you employ a single-tenant environment?
Authentication, Authorization, and Accounting	
HLAA-01	Can you enforce password/passphrase aging requirements?
HLAA-02	Does your web-based interface support authentication, including standards-based single-sign-on? (e.g. InCommon)
HLAA-03	Does your <i>application</i> support integration with other authentication and authorization systems? List which ones (such as Active Directory, Kerberos and what version) in Additional Info?
HLAA-04	Does the <i>system</i> (servers/infrastructure) support external authentication services (e.g. Active Directory, LDAP) in place of local authentication?
HLAA-05	Are audit logs available that include AT LEAST all of the following; login, logout, actions performed, and source IP address?
Business Continuity Plan	

HLBC-01	Do you have a documented Business Continuity Plan (BCP)?
HLBC-02	Is there a documented communication plan in your BCP for impacted clients?
HLBC-03	Are all components of the BCP reviewed at least annually and updated as needed to reflect change?
HLBC-04	Does your organization conduct an annual test of relocating to an alternate site for business recovery purposes?
Change Management	
HLCH-01	Do you have a documented and currently followed change management process (CMP)?
HLCH-02	Will the institution be notified of major changes to your environment that could impact the institution's security posture?
HLCH-03	Do you have policy and procedure, currently implemented, guiding how security risks are mitigated until patches can be applied?
HLCH-04	Do procedures exist to provide that emergency changes are documented and authorized (including after the fact approval)?

Data

HLDA-01	Do you physically and logically separate institution's data from that of other customers?
HLDA-02	Is sensitive data encrypted in transport? (e.g. system-to-client)
HLDA-03	Is sensitive data encrypted in storage (e.g. disk encryption, at-rest)?
HLDA-04	Do backups containing institution data ever leave the institution's Data Zone, either physically or via network routing?
HLDA-05	Do you have a media handling process, that is documented and currently implemented, including end-of-life, repurposing, and data sanitization procedures?
HLDA-06	Is any institution data visible in system administration modules/tools?

Database

HLDB-01	Does the database support encryption of specified data elements in storage?
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HLDB-02	Do you currently use encryption in your database(s)?
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Datacenter

HLDC-01	Will any institution data leave the institution's Data Zone?
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HLDC-02	Does your company own the physical data center where the institution's data will reside?
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HLDC-03	Does the hosting provider have a SOC 2 Type 2 report available?
---------	---

HLDC-04	Does the physical barrier fully enclose the physical space preventing unauthorized physical contact with any of your devices?
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Disaster Recovery Plan

HLDR-01	Do you have a Disaster Recovery Plan (DRP)?
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HLDR-02	Are any disaster recovery locations outside the institution's Data Zone?
---------	--

HLDR-03	Are all components of the DRP reviewed at least annually and updated as needed to reflect change?
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Firewalls, IDS, IPS, and Networking

HLFI-01	Are you utilizing a web application firewall (WAF) and/or a stateful packet inspection (SPI) firewall?
HLFI-02	Do you have a documented policy for firewall change requests?
HLFI-03	Are you employing any next-generation persistent threat (NGPT) monitoring?
HLFI-04	Do you monitor for intrusions on a 24x7x365 basis?

Physical Security

HLPH-01	Does your organization have physical security controls and policies in place?
HLPH-02	Are employees allowed to take home customer data in any form?

Policies, Procedures, and Processes

HLPP-01	Can you share the organization chart, mission statement, and policies for your information security unit?
---------	---

HLPP-02	Are information security principles designed into the product lifecycle?
HLPP-03	Do you have a formal incident response plan?
HLPP-04	Do you have a documented information security policy?
Systems Management & Configuration	
HLSY-01	Are systems that support this service managed via a separate management network?
HLSY-02	Do you have a systems management and configuration strategy that encompasses servers, appliances, and mobile devices (company and employee owned)?
Vulnerability Scanning	
HLVU-01	Have your systems and applications had a third party security assessment completed in the last year?

HLVU-02	Are your systems and applications scanned for vulnerabilities [that are remediated] prior to new releases?
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mm/dd/yyyy

ces will access and/or host institutional data must complete the Vendor Assessment Tool. Through
wers will be reviewed by institution security analysts upon submittal. This process will assist the in
ntended for use by vendors participating in a Third Party Security Assessment and should be comp

Vendor Name

Product Name and Version Information

Brief Description of the Product

http://www.vendor.domain/privacynotice

Vendor Contact Name

Vendor Contact Title

Vendor Contact E-mail Address

555-555-5555

See Instructions tab for guidance

See Instructions tab for guidance

Al Arboleda

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tom; the built-in formatting logic relies on this order. Step 2: Submit the completed Higher Educati

Vendor Answers	Additional Information

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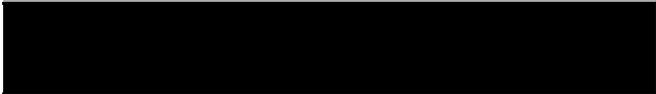
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Version 2.01

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Guidance

Guidance

Include circumstances that may involve off-shoring or multi-national agreements.

Include the number of years and in what capacity.

Share any details that would help information security analysts assess your product.
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License Information

Shared Assessments Introduction

Campus IT environments are rapidly changing and the speed of cloud service adoption is increasing. Institutions looking for ways to do more with less see cloud services as a good way to save resources. As campuses deploy or identify cloud services, they must ensure the cloud services are appropriately assessed for managing the risks to the confidentiality, integrity and availability of sensitive institutional information and the PII of constituents. Many campuses have established a cloud security assessment methodology and resources to review cloud services for privacy and security controls. Other campuses don't have sufficient resources to assess their cloud services in this manner. On the vendor side, many cloud services providers spend significant time responding to the individualized security assessment requests made by campus customers, often answering similar questions repeatedly. Both the provider and consumer of cloud services are wasting precious time creating, responding, and reviewing such assessments.

The **Higher Education Cloud Vendor Assessment Tool (HECVAT)** attempts to generalize higher education information security and data protection questions and issues for consistency and ease of use. Some institutions may have specific issues that must be addressed in addition to the general questions provided in this assessment. It is anticipated that this HECVAT will be revised over time to account for changes in cloud services provisioning and the information security and data protection needs of higher education institutions.

The Higher Education Cloud Vendor Assessment Tool:

- Helps higher education institutions ensure that cloud services are appropriately assessed for security and privacy needs, including some that are unique to higher education
- Allows a consistent, easily-adopted methodology for campuses wishing to reduce costs through cloud services without increasing risks
- Reduces the burden that cloud service providers face in responding to requests for security assessments from higher education institutions

The HECVAT was created by the Higher Education Information Security Council Shared Assessments Working Group. Its purpose is to provide a starting point for the assessment of third-party provided cloud services and resources. Over time, the Shared Assessments Working Group hopes to create a framework that will establish a community resource where institutions and cloud services providers will share completed Higher Education Cloud Vendor Assessment Tool assessments.

<https://www.educause.edu/hecvat>
<https://www.ren-isac.net/hecvat>

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