



## **THE TEXAS A&M UNIVERSITY SYSTEM**

Office of Procurement and HUB Program

### **REQUEST FOR PROPOSAL**

**RFP NUMBER: RFP01-CIO-25-229**

**NVIDIA AI Center of Excellence Project**

**PROPOSAL MUST BE RECEIVED PRIOR TO:**

**2:00 P.M. Central Time on December 27, 2024**

**EMAIL RFP RESPONSES TO:**

**[soprocurement@tamus.edu](mailto:soprocurement@tamus.edu)**

**SUBJECT LINE: CIO-25-229 AI CoE**

**NOTE:** Proposal response must be received by The Texas A&M University System Office of Procurement and HUB Program before the date and time specified for receipt of proposal as stated within Section 2.3 of this RFP. After the due date and time, only the names of respondents will be made public.

### **REFER INQUIRIES TO:**

Jeff Zimmermann, Executive Director  
Procurement and Business Services | HUB Program  
The Texas A&M University System  
Email: [soprocurement@tamus.edu](mailto:soprocurement@tamus.edu)

All proposals shall become the property of The Texas A&M University System and the State of Texas upon receipt. Proposals may be subject to public review after contracts have been executed. Refer to Section 5G for more information regarding confidential and proprietary information.

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## SECTION 1 - INTRODUCTION

### 1.1 **Scope**

The Texas A&M University System ("A&M System") is seeking proposals from qualified vendors ("Respondents") interested in working with NVIDIA on the design, development, and implementation of an Artificial Intelligence (AI) Center of Excellence (CoE) for the A&M System.

By submitting responses, each Respondent certifies that it understands this Request for Proposal ("RFP") and has full knowledge of the scope and nature of the opportunity described herein. Each Respondent also certifies that it understands that all costs relating to preparing and responding to this RFP will be the sole responsibility of the Respondent. Proposals shall be in accordance with the terms, conditions, and requirements set forth in this RFP.

### 1.2 **About The A&M System**

The Texas A&M University System is one of the largest systems of higher education in the nation, with a budget of \$7.3 billion. Through a statewide network of 11 universities, a comprehensive health science center, eight state agencies, Texas A&M-Fort Worth and Texas A&M-RELLIS, the Texas A&M System educates more than 157,000 students and makes more than 21 million additional educational contacts through service and outreach programs each year. System-wide, research and development expenditures exceed \$1.5 billion and help drive the state's economy.

More information about the A&M System and all its Members can be found in the [A&M System About](https://www.tamus.edu/system/about/) page (<https://www.tamus.edu/system/about/>).

### 1.3 **Priorities/Expectations**

Respondents should note the following priorities/expectations with regard to the possibility of A&M System establishing a contractual relationship with any Respondent:

- (a) *Ensuring a Quality Level of Service.* This priority encompasses the quality of the level of service that can be provided to all A&M System Members in a timely, cost-effective manner. A&M System is seeking a Respondent or Respondents that will ensure the provision of such quality in its delivery of service through proven techniques and established metrics.
- (b) *Level of Experience and Expertise.* Respondent must demonstrate capabilities in providing the utmost level of experience and expertise to ensure successful completion and implementation of services as determined by the A&M System.
- (c) *Delivery Efficiency as it Relates to Total Costs.* Respondent must demonstrate its ability to deliver the required services in a cost-effective and timely manner while not sacrificing the quality required by the A&M System.

### 1.4 **Calendar of Events**

<b><u>Activity</u></b>	<b><u>Date</u></b>
Release of Request for Proposal	December 9, 2024
Deadline to Submit Questions	December 17, 2024
Release of Addendum (if applicable)	December 19, 2024
<b>Responses Due</b>	December 27, 2024
Selection of Respondent	TBD

A&M System will make every effort to adhere to the above schedule. The schedule, however, is subject to change. This may be in the event that further clarification of responses or terms of contract are in the best interest of A&M System and/or in the event A&M System requires more time to ensure that the selection of the Respondent is in accordance with its policies, rules and regulations, as well as actual timing needs.

#### **1.5 Performance Period**

Should the A&M System, in its sole discretion, enter into an Agreement with the successful Respondent as a result of this RFP, the resultant Agreement shall be effective upon execution for a suggested initial period of three (3) years. Agreement may be extended for additional terms providing all parties mutually agree in writing on the extension. Any extensions shall be at the same terms and conditions plus any approved changes to be determined by the A&M System and negotiated in writing with the successful Respondent.

## SECTION 2 - INSTRUCTIONS FOR RESPONDENTS

### 2.1 General Information

This RFP outlines the scope and requirements stated within Section 3. While it is the intent of the A&M System to effectively establish an agreement with a qualified provider for these services, there is no guarantee that a contract will be awarded.

Submittals are to be in accordance with the outline and specifications contained herein, are to remain in effect a minimum of 120 days from the date of submission and may be subject to further extensions as negotiated. A statement to this effect should be contained in the Respondent's cover letter.

This RFP contains specific requests for information. Respondents are encouraged to examine all sections of this RFP carefully, as the degree of interrelationship between sections is critical. In responding to this RFP, Respondents are encouraged to provide any additional information they believe relevant.

Clause headings appearing in this RFP have been inserted for convenience and ready reference. They do not purport to define, limit or extend the scope of intent of the respective clauses. Whenever the terms "must" "shall" "will" "is required" or "are required" are used in the RFP, the subject being referred to is to be a required feature of this RFP and critical to the resulting submittal.

In those cases where mandatory requirements are stated, material failure to meet those requirements could result in disqualification of the Respondent's response. Any deviation or exception from RFP specifications must be clearly identified by the Respondent in its submittal.

Expenses for developing and presenting proposals shall be the entire responsibility of the Respondent and shall not be chargeable to the A&M System. All documentation submitted with the proposal response will become the property of the A&M System.

### 2.2 Examination of the Request for Proposal

Before submitting, each Respondent will be held to have examined A&M System requirements outlined in Section 3 and satisfied itself as to the existing conditions under which it will be obligated to perform in accordance with specifications of this RFP.

No claim for additional compensation will be allowed due to unfamiliarity with the specifications and/or existing conditions. It shall be understood that the Respondent has full knowledge of all of the existing and/or revised conditions and accepts them "as is."

### 2.3 Submittal Instructions

All proposals must be received by the A&M System, no later than **2:00:00 p.m. Central Time, December 27, 2024** electronically via email to [soprocurement@tamus.edu](mailto:soprocurement@tamus.edu) with the subject line of "CIO-25-229 AI CoE." The sent time indicated within the A&M System email server shall be used for the receipt and acceptance of the response. It is each Respondent's responsibility to ensure that the entire submittal response is received by the A&M System by the deadline stated above regardless of submission method. **Late proposal responses will not be considered under any circumstances.**

A file sharing tool may be used to submit the proposal response if large file sizes are an issue. If opting to use a file sharing tool it is recommended that Respondents send a test file prior to the

due date.

**Submittal File Format:** Submission shall be saved as two (2) separate files in Adobe Portable Document Format (PDF) according to the items listed below and named as such; **I) “company name – Proposal”** and **II) “company name – Forms.”**

## 2.4 **Proposal Components**

The following documents and all requirements from noted sections are to be returned as part of your proposal submittal. Failure to include these documents may be basis for response disqualification.

### **I. Proposal**

- ✓ Cover Letter to include a brief introduction with interest and capability of the Respondent.
- ✓ Table of Contents
- ✓ Proposal, to include Sections 4.1 – 4.3
- ✓ Pricing Proposal, Section 4.4

### **II. Forms**

- ✓ Signed Execution of Offer (Exhibit A)
- ✓ Non-Collusion Affidavit (Exhibit B) – signed and notarized
- ✓ Accessibility documentation (Section 3.6)
- ✓ HUB Subcontracting Plan (Section 4.5)

**Proposal format:** The proposal response shall be presented in the order listed above with sections noted accordingly for easy reference. The Table of Contents shall provide page numbers for each section of the proposal.

**Note:** Additional information regarding the Execution of Offer and Non-Collusion Affidavit.

- Execution of Offer: The signature in the Execution of Offer within the electronic copy shall serve as the official signature of record. Signature can be done electronically with DocuSign, Adobe or another similar tool.
- Non-Collusion Affidavit: The Respondent signature as well as the notarization on this document may be done electronically with DocuSign, Adobe or another similar tool. An agreement may not be executed with the awarded Respondent until this document is fully signed and notarized.

## 2.5 **Inquiries and Interpretations**

All questions concerning this RFP are to be directed, in writing, to Jeff Zimmermann, Executive Director, Procurement and Business Services to [soprocurement@tamus.edu](mailto:soprocurement@tamus.edu). Respondent may not contact other individuals at A&M System to discuss any aspect of this RFP, unless expressly authorized by the A&M System Procurement office to do so.

Questions regarding the RFP, including questions for more data or information beyond that included in this RFP and any attachment, should be presented in writing. **Deadline for submission**

**of questions is December 17, 2024.** The A&M System will publish all questions with responses according to the schedule in Section 1.4.

Responses to inquiries which directly affect an interpretation or change to this RFP will be issued in writing by addendum/amendment and posted to the Electronic State Business Daily (ESBD) at the following site; <http://www.txsmartbuy.com/sp>. (Input Agency Number "710" and select "Posted" for the Status).

It is the responsibility of all Respondents to check the ESBD for any and all addenda issued for this RFP. All such addenda/amendments issued by the A&M System prior to the time that proposals are received shall be considered part of the RFP, and the Respondent shall consider and acknowledge receipt of such in Exhibit A – Execution of Offer. Only those A&M System inquiries receiving a public reply via formal written addenda shall be binding. Oral and other interpretations or clarifications will be without legal effect.

## **2.6 Selection Process**

The evaluation of the proposals shall be based on the information provided that the A&M System deems to represent the **best value** to the A&M System. The RFP provides the information necessary to prepare and submit proposals for consideration by the A&M System. All properly submitted proposals will be reviewed, evaluated, and ranked by the A&M System. The A&M System will rank the Respondents in the order that they provide the overall "best value" to the A&M System based on an evaluation of the responses to the RFP. The A&M System may interview one or more of the top ranked Respondents as part of the evaluation process.

The A&M System will base its choice on demonstrated competence, knowledge, and qualifications, ability of the Respondent to meet the needs of the A&M System, timeline for implementation, on the reasonableness of the proposed costs, and on the demonstrated ability to include businesses certified as a Historically Underutilized Business (HUB) in the state of Texas in the performance of a percentage of the scope of work (as applicable); and if other considerations are equal, give preference to a Respondent who is certified as a HUB in the state of Texas, whose principal place of business is in the state of Texas, or who will manage the contract wholly from an office in the state of Texas.

The Respondent selected will be the one whose experience and qualifications, as presented in response to this RFP, establish them, in the opinion of A&M System, as well-qualified and offering the greatest benefits, experience and value to A&M System. A&M System may cancel this RFP or reject proposals at any time prior to an award and is not required to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous. Should A&M System determine in its sole discretion that only one Respondent is fully qualified, or that one Respondent is clearly more highly qualified than the others under consideration, a contract may be negotiated and executed with that Respondent. The contract will be an agreement incorporating by reference all the requirements, terms and conditions of the solicitation and the Respondent's proposal as negotiated.

The most qualified Respondents as determined by A&M System MAY BE REQUIRED to interview with the evaluation committee before the final selection(s). If interviews are required, they will be done online through video conferencing, or in person if allowed at the time by A&M System guidelines and agreed to by both parties. A&M System will not provide compensation to Respondents for any expenses incurred by the Respondent(s) for proposal preparation, submission or interviews that may be conducted.

Submission of proposals indicates Respondent's acceptance of the evaluation techniques and the recognition that subjective judgments must be made by A&M System during the evaluation process. The selection of the successful proposal may be made by A&M System on the basis of the proposals initially submitted, without discussion, clarification, or modification. In the alternative, selection of the successful proposal(s) may be made by the A&M System on the basis of negotiation with any of the Respondents. A&M System shall not disclose any information derived from the proposals submitted by competing Respondents in conducting such discussions.

All proposals must be complete and convey all of the information requested to be considered responsive. If a proposal fails to conform to the essential requirements of the RFP, A&M System alone will determine whether the variance is significant enough to consider the proposal susceptible to being made acceptable, and therefore a candidate for further consideration, or not susceptible and therefore not considered for award.

A&M System may perform reference checks and seek further information, as needed from all Respondents whose proposals A&M System, at its discretion, considers viable, based on the initial evaluation and scoring. The Respondent's response to this requirement officially authorizes A&M System to contact these organizations to discuss the services and other considerations that the Respondent has provided to such organizations and authorizes the organizations to provide such information to A&M System and Respondent shall and hereby does release and hold harmless A&M System, the state of Texas, and the organization of any and all liability whatsoever, in connection with providing and receiving all such information. Any negative responses received from reference checks may be grounds for disqualification of the proposal.

A&M System reserves the right to accept or reject any or all offers, to waive informalities and technicalities, to accept the offer considered most advantageous, and/or to make the award to the most responsive Respondent.

## SECTION 3 - SCOPE AND SUPPORT

### 3.1 General

The A&M System is requesting proposals from Respondents interested in working with NVIDIA on the design, development, and implementation of an Artificial Intelligence (AI) Center of Excellence (CoE) for the A&M System. This CoE will serve as a hub for AI research, education and innovation.

### 3.2 Overview

The AI CoE will be a state-of-the-art facility designed to foster collaboration between academia and industry in the field of AI. The CoE will include advanced computing infrastructure, research laboratories, collaborative spaces, and educational facilities.

### 3.3 Scope of Work

The selected Respondent will be responsible for:

- Collaborating with NVIDIA and A&M System to ensure smooth implementation of the DGX SuperPOD solution
- Providing local/on-site project management and coordination
- Assisting with site preparation and infrastructure readiness assessment
- Coordinating the delivery and installation of NVIDIA hardware components
- Supporting NVIDIA during the physical installation and the logical configuration of the compute and network
- Assisting with network integration and storage network connectivity, performing network testing and validation and system operational validation tests
- Offering local, on-site technical assistance during and after deployment
- Conducting user training sessions in collaboration with NVIDIA
- Assisting with documentation of the deployed solution
- Facilitating communication between Texas A&M, NVIDIA, and other involved parties
- Any value-added services not listed above

### 3.4 Technical Specifications

The specifications in the below subsections are provided for informational purposes only as they will be fulfilled by NVIDIA.

#### 3.4.1 Computing Infrastructure

- Deployment of NVIDIA DGX SuperPOD with DGX H200 Systems
- High-performance AI supercomputing cluster with a minimum of 760 H200 GPUs
- GPU architecture capable of supporting large language models and generative AI workloads
- Minimum 107 TB of total GPU memory
- High-speed, low-latency networking infrastructure (e.g., InfiniBand)
- Scalable storage solution with at least 10 PB usable capacity

### 3.4.2 Storage Subsystems

- High-performance storage solution with at least 10 PB usable capacity
- Storage throughput capable of supporting full I/O utilization of 3-4 Scalable Units (SUs)
- Integration with NVIDIA networking fabric for optimal performance

### 3.4.3 Software and Tools

- NVIDIA AI Enterprise software suite including frameworks, tools, and pre-trained models
- Cloud-native software for streamlining AI workflows and data analytics
- Software with comprehensive cluster management capabilities, job scheduling and resource allocation features, monitoring and reporting tools, user management, access control features, and integration with AI frameworks and tools
- Support for multiple job scheduling systems (e.g., Kubernetes, Slurm)

### 3.4.4 AI Development and Deployment Capabilities

- Large language model (LLM) development and customization tools
- Generative AI model support with NVIDIA NeMo framework
- Data preparation and curation tools
- Model training, fine-tuning, and deployment solutions

### 3.4.5 Educational Resources

- Access to 30 NVIDIA Deep Learning Institute (DLI) training credits
- Hands-on workshops and bootcamps for students and faculty
- Certification programs in AI and accelerated computing

## 3.5 **Services and Support**

The services and support in the below subsections are provided for informational purposes only as they will be fulfilled by NVIDIA.

### 3.5.1 Coordinated Full-Stack Support

- End-to-end support for the entire DGX solution, including compute, networking, and storage components
- Seamless integration of support across all solution elements
- Clear escalation paths and response time commitments

### 3.5.2 Premium Technical Account Manager (PTAM)

- Role and responsibilities of the PTAM
- How the PTAM will interface with the Texas A&M team
- Frequency of check-ins and performance reviews
- Strategy for proactive planning and support for releases and upgrades

### 3.5.3 NVIDIA Deep Learning Institute (DLI) Training

- Administration training for cluster management
- User training for researchers and the academic community
- Customized learning paths and hands-on workshops
- Details on training credits and certification options

#### 3.5.4 TOP500 HPL Benchmark

- Conduct a TOP500 High-Performance Linpack (HPL) benchmark run
- Set performance expectations based on a 3 SU design
- Provide detailed analysis and reporting of benchmark results

### 3.6 **Accessibility**

Under Texas Government Code Chapter 2054, Subchapter M, Texas Administrative Code Sections 206.70 and 213, Title II of the American with Disabilities Act, and implementing policy of A&M System's Regulations 29.01.04, the Texas A&M University System must procure Products that comply with the accessibility standards when such products are available in the commercial marketplace or when such Products are developed in response to a procurement solicitation. Accordingly, the Respondent must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

- Provide your Accessibility Conformance Report (ACR) with your RFP response.** At a minimum your ACR should address accessibility, keyboard navigation, and screen reader accessibility. <https://www.itic.org/policy/accessibility/>
- Provide Policy Driven Adoption Vendor Self-Assessment (PDAA) with your RFP response.** This Information and Communications Technology (ICT) accessibility assessment is for vendor organizations to describe how they are currently implementing accessibility policy and practices within their organizations. <https://dir.texas.gov/resource-library-item/policy-driven-adoption-accessibility-pdaa-vendor-assessment>
- Are all areas of your application fully Unicode compliant in terms of both data entry and display?
- Does your application fully support the major world orthographies (i.e., Chinese, Japanese, Arabic), including those with non-English directionality (R-L, or top to bottom)? Can it accommodate any practical orthographic tradition (i.e., Cherokee syllabics) that can be handled within Unicode?
- What is your timeline for making the solution fully accessible?

### 3.7 **TX-RAMP Certification**

Should respondent's product meet the Texas Department of Information Resources ("DIR") definition of a cloud computing service, respondent shall provide A&M System with evidence of its TX-RAMP compliance and certification at least thirty (30) days prior to the start of any agreement. (See also Exhibit D: 9. INFORMATION TECHNOLOGY: C. Cloud Computing Services).

## SECTION 4 - PROPOSAL RESPONSE

The Respondent recognizes that in its selection process, A&M System will rely, in part, on the answers provided in response to this Section. Accordingly, Respondent warrants to the best of its knowledge that all responses are true, correct and complete.

### 4.1 Company Profile

- A. Provide a contact name for this RFP response, including title, address, telephone number and email address.
- B. Number of years in business: \_\_\_\_\_
- C. Number of Employees: \_\_\_\_\_ (company wide) \_\_\_\_\_ (relevant branch office(s))
- D. Annual Sales Volume: \_\_\_\_\_ (company wide)
- E. Is your company currently for sale or involved in any transaction to expend or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.
- F. Provide any details of all past or pending litigation or claims filed against your company that would negatively impact your company's performance under an agreement with the Agencies.
- G. Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If yes, specify date(s), details, circumstances, and prospects for resolution.

### 4.2 Vendor Qualifications

Respondent shall provide a response to the following items:

- A. Respondent must furnish at least three (3) references of clients from the past five years for services provided similar in scope to the services described in Section 3 above. If available, the A&M System requests that two of the references come from institutions of Higher Education and/or other public sector entities.
  - Company/Agency name & address
  - Contact person name & title
  - Contact phone number
  - Contact email address
  - Summary of services provided
- B. Has Respondent worked with the A&M System or any of its Members in the past two years? If yes, provide the specific member of the A&M System, point of contact (name, title, phone number, and email address), and a brief description of the work performed.
- C. Describe Respondent's core service offerings and include experience and expertise with similar AI infrastructure deployments.

### 4.3 Technical Proposal

Respondent should describe how their capabilities, experience and qualifications can address the overall needs and requirements of the A&M System as described in SECTION 3 – SCOPE AND

SUPPORT. In responding to these requirements, Respondent:

- A. Shall provide sufficient information to fully demonstrate that the Respondent can fulfill the scope and requirements by addressing each item within sub-section 3.3 above.
- B. Shall provide a list of the services and support the Respondent will rely on NVIDIA to provide throughout the project as it relates to Section 3.5 above.
- C. Shall provide a project management approach that demonstrates ability to work with NVIDIA for successful deployment and completion of the project.
- D. Shall provide a timeline for implementation with key milestones. Timeline shall include when implementation can begin upon execution of an Agreement through the date proposed for completion.
- E. May provide other documentation and information to demonstrate the overall value of the Respondents offerings, and any other services available to support the project.

#### **4.4 Pricing Proposal**

Respondent shall provide a complete pricing proposal for the scope and support required for this project to include the following items.

- A. Cost Breakdown: Include all hardware, software, installation, support, and any additional services necessary to perform the scope of work.
  - Refer to the attached itemized bill of materials spreadsheet. Respondent shall provide the cost breakdown for both options to be considered by the A&M System; 3SU DGX H200 SuperPOD and 4SU DGX H200 SuperPOD.
  - Any additional expenses or costs necessary for the completion of this project such as travel must identified and included in this proposal. Allowed travel expenses must be in compliance with the State of Texas Travel Guidelines as defined by the Comptroller of Public Accounts.
- B. Financing Options: Provide any options available to the A&M System for the completion of the scope of work for this project such as flexible acquisition models including leasing options.

#### **4.5 Historically Underutilized Business (HUB) Requirements**

It is the policy of the State of Texas and the A&M System to encourage the use of Historically Underutilized Businesses (HUBs) both directly and indirectly in prime contracting and subcontracting efforts. The goal of the HUB Program is to promote equal access and equitable opportunity in the A&M System contracting and purchasing activities.

A subcontracting opportunity is defined as any portion(s) of the scope contracted with a vendor to work, supply commodities for, or contribute towards completing work for a governmental entity.

The Respondent is required to submit a completed HUB Subcontracting Plan (HSP) form detailing how they will conduct a good faith effort to attract and incorporate State of Texas HUB-certified vendors to perform a percentage of the scope of work defined within this RFP.

**The HUB participation goal for this RFP is 15%** and the Respondent is required to conduct a good faith effort to achieve this goal through subcontracting opportunities, mentor protégé

relationships, or other means of meaningful business relationships to increase the capacity and utilization of HUB firms. Maximizing meaningful opportunities to HUBs is of the utmost importance to The Texas A&M University System. The good faith effort requirement may be met through successful completion of the plans described below.

**The Respondent is required to complete and submit a HUB Subcontracting Plan (HSP) form.** Failure to submit a comprehensive, acceptable HSP form will be considered a material failure to comply with the requirements of this RFP and may result in rejection of the response. Refer to Section 2.6 for details on the A&M System's selection process.

#### **HUB Subcontracting Plan (HSP) Form**

The Respondent is required to review and complete the [A&M System HSP form](#).

In all cases, the Respondent is required to:

- i. Complete Section 1, Section 2, and Section 4 of the HSP form.
- ii. Determine whether it is probable that they will subcontract any portion of the scope within this RFP.
- iii. Complete either Method A, Method B, or Section 3 as applicable based on the response to Section 2.

If the Respondent determines it is probable that they will subcontract any portion of the scope within this RFP, the applicable HUB participation goal for this RFP is **15%**, and the Respondent is required to conduct and demonstrate a good faith effort to achieve this goal and list all anticipated subcontracting opportunities in Section 2b of the HSP form. **Note: In all cases, the HUB goal stated within this RFP takes precedence over the HUB goal stated on the downloaded HSP form.**

Please contact The Texas A&M University System HUB Program Office at [SO-HUBProgram@tamus.edu](mailto:SO-HUBProgram@tamus.edu) for assistance with completing the requirements of this section. Respondents can submit a draft of their HSP form prior to submittal of their response to the RFP for review. All drafts must be submitted at least five business days prior to the RFP due date.

## SECTION 5 - GENERAL TERMS AND CONDITIONS

- A. TERMS AND CONDITIONS: The A&M System reserves the right to accept, reject, modify, and/or negotiate any and all submittals received in conjunction with this RFP. It reserves the right to waive any defect or informality in the submittals on the basis of what it considers to be in its best interests. Any submittal which the A&M System determines to be incomplete, conditional, obscure, or which has irregularities of any kind, may be rejected. The A&M System reserves the right to award to the company, or companies, which in our sole judgment, will best serve our long-term interest.

This RFP in no manner obligates the A&M System to the eventual purchase of any products or services described, implied, or which may be proposed, until confirmed by written agreement, and may be terminated by the A&M System without penalty or obligation at any time prior to the signing of a contract.

The Respondent must include a formal copy of any Respondent terms and conditions applicable to this transaction. Evaluation and acceptance and/or modification of these terms and conditions by the A&M System Office of General Counsel are essential prior to execution of any resultant agreement. In the event the Respondent does not supply terms and conditions with their submittal, A&M System terms and conditions will govern this transaction.

- B. GOVERNING LAW: Respondent agrees that, in the event of a dispute, laws of the State of Texas will prevail.
- C. NON-DISCRIMINATION: The parties agree that in the performance of any contract they shall not discriminate in any manner on the basis of race, color, national origin, age, religion, sex, genetic information, veteran status or disability protected by law. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation. By submitting a submittal, Respondent certifies that it will conform to the provisions of the federal Civil Rights Act of 1964, as amended.
- D. CIVIL RIGHTS REQUIREMENTS: All Respondents must comply with applicable civil rights laws.
- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By submitting a proposal, the Respondent certifies that it does not, and will not, during the performance of any resultant Agreement, employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as amended.
- F. DEBARMENT STATUS: By submitting a proposal, Respondent certifies that it is not currently debarred from submitting submittals on contracts nor is it an agent of any person or entity that is currently debarred from submitting bids on contracts.
- G. PUBLIC INFORMATION: Respondent is hereby notified that the A&M System strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to disclosure of public information. The A&M System may seek to protect from disclosure all information submitted in response to this RFP until such time as the resultant Agreement is executed. Upon execution of the resultant Agreement, the A&M System 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, Texas Government Code, Chapter 552. Respondent will be advised of a request for public information that implicates its materials and

will have the opportunity to raise any objections to disclosure to the Texas Attorney General.

- H. ALTERNATE PROPOSALS: A&M System reserves the right to consider alternate proposals submitted by Respondents. Alternate proposals shall be clearly marked "Alternate" with the proposed alternates clearly defined and all pricing/cost advantages included, if applicable.
- I. ANTITRUST: Respondent hereby assigns to the A&M System, any and all claims for overcharges associated with any contract resulting from this RFP which arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq. (1973) and which arise under the antitrust laws of the State of Texas, Texas Business and Commercial Code Ann. Sec. 15.01, et seq. (1967).
- J. EXECUTIVE HEAD OF A STATE AGENCY AFFIRMATION: In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Respondent certifies that it is not (1) the executive head of the A&M System or any of its Members, (2) a person who at any time during the four years before the date of the contract was the executive head of the A&M System or any of its Members, or (3) a person who employs a current or former executive head of the A&M System or any of its Members.
- K. INSURANCE: Respondent shall obtain and maintain, for the duration of any resultant Agreement or longer, the minimum insurance coverage set forth on Exhibit C attached hereto.
- L. REQUIRED CONTRACT TERMS: The terms and conditions contained in the draft agreement attached as Exhibit D or, in the sole discretion of the A&M System, terms and conditions substantially similar to those contained in the attached agreement, will constitute and govern any Agreement that results from this RFP. If Respondent takes exception to any terms or conditions set forth in the attached agreement, Respondent will submit a list of the exceptions as part of its proposal. Respondent's exceptions will be reviewed by the A&M System and may result in disqualification of Respondent's proposal as non-responsive to this RFP. If Respondent's exceptions do not result in disqualification of Respondent's proposal, then the A&M System may consider Respondent's exceptions when the A&M System evaluates the Respondent's proposal.

**EXHIBIT A**  
**EXECUTION OF OFFER**

**RFP01 CIO-25-229**

**DATE:** \_\_\_\_\_

**In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all commodities or services at the prices quoted.**

**A.1 Respondent Affirmation**

NOTE TO RESPONDENTS: SUBMIT ENTIRE SECTION WITH RESPONSE.

This execution of offer must be completed, signed, and returned with the respondent's proposal. Failure to complete, sign and return this execution of offer with the proposal may result in rejection of the proposal.

Signing a false statement may void the submitted proposal or any agreements or other contractual arrangements, which may result from the submission of respondent's proposal. A false certification shall be deemed a material breach of contract and, at owner's option, may result in termination of any resulting contract or purchase order.

Addenda Acknowledgment

Receipt is hereby acknowledged of the following addenda to this RFP by entering yes or no in space provided and indicating date acquired. Enter "N/A" if none received.

No. 1 \_\_\_\_\_ Date \_\_\_\_\_

No. 2 \_\_\_\_\_ Date \_\_\_\_\_

**A.2 Signature**

By signing below, the Respondent hereby certifies as follows, and acknowledges that such certifications will be included in any resulting contract:

- (i) the Response and all statements and information prepared and submitted in response to this RFP are current, complete, true and correct;
- (ii) it is not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount trip, favor or service to a public servant in connection with the submitted response or any subsequent proposal. Failure to sign below, or signing a false statement, may void the response or any resulting contracts at A&M System' option, and the Respondent may be removed from all future proposal lists at this state agency;
- (iii) the individual signing this document and the documents made part of the RFP is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract which may result from the submission of the Response;
- (iv) no relationship, whether as a relative, business associate, by capital funding agreement or by any other such kinship exists between Respondent and an employee of A&M System;
- (v) Respondent has not been an employee of A&M System within the immediate twelve (12) months prior to the RFP response;
- (vi) no compensation has been received for participation in the preparation of this RFP (ref. Section 2155.004 Texas Government Code);
- (vii) all services to be provided in response to this RFP will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health law (Public Law 91-596) and its regulations in effect as of the date of this solicitation;

- (viii) Respondent complies with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action;
- (ix) to the best of its knowledge, no member of the Board of Regents of The Texas A&M University System, or the Executive Officers of the Texas A&M University System or its member institutions or agencies, has a financial interest, directly or indirectly, in the Project;
- (x) if the Respondent is subject to the Texas franchise tax, it is not currently delinquent in the payment of any franchise tax due under Chapter 171, Texas Tax Code, or is exempt from the payment of such taxes. A false certification may result in the Respondent's disqualification;
- (xi) under Section 231.006, Family Code, the Respondent or applicant certifies that the individual or business entity named in this RFP, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that any resultant agreement may be terminated and payment may be withheld if this certification is inaccurate; and,
- (xii) under Section 2155.006, Government Code, the Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that any resultant agreement may be terminated and payment withheld if this certification is inaccurate.

Respondent shall provide their Federal Employer Identification Number (EIN), full VENDOR name, address and contact information in the spaces below. Failure to sign manually or with electronic signature (such as DocuSign or Adobe Sign) below will disqualify the proposal response. The person signing the submittal should show title or authority to bind his/her firm in contract.

Federal EIN/Taxpayer ID #: \_\_\_\_\_

Vendor/Company Name: \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_

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

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

Street: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

E-mail: \_\_\_\_\_

<p>* By signing this RFP, Respondent certifies that if a Texas address is shown as the address of the respondent, respondent qualifies as a Texas Resident Bidder as defined in Texas Government Code, § 2252.001(4).</p>
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**EXHIBIT B**  
**NON-COLLUSION AFFIDAVIT**

The undersigned, duly authorized to represent the persons, firms and corporations joining and participating in the submission of the foregoing Proposal (such persons, firms and corporations hereinafter being referred to as the "Respondent"), being duly sworn, on his or her oath, states that to the best of his or her belief and knowledge no person, firm or corporation, nor any person duly representing the same joining and participating in the submission of the foregoing Proposal, has directly or indirectly entered into any agreement or arrangement with any other Respondents, or with any official of A&M System or any employee thereof, or any person, firm or corporation under contract with A&M System whereby the Respondent, in order to induce acceptance of the foregoing Proposal by said A&M System, has paid or is to pay to any other Respondent or to any of the aforementioned persons anything of value whatever, and that the Respondent has not, directly or indirectly entered into any arrangement or agreement with any other Respondent or Respondents which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing Proposal.

The Respondent hereby certifies that neither it, its officers, partners, owners, providers, representatives, employees and parties in interest, including the affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Respondent, potential Respondent, firm or person, in connection with this solicitation, to submit a collusive or sham bid, to refrain from bidding, to manipulate or ascertain the price(s) of other Respondents or potential Respondents, or to obtain through any unlawful act an advantage over other Respondents or A&M System.

The prices submitted herein have been arrived at in an entirely independent and lawful manner by the Respondent without consultation with other Respondents or potential Respondents or foreknowledge of the prices to be submitted in response to this solicitation by other Respondents or potential Respondents on the part of the Respondent, its officers, partners, owners, providers, representatives, employees or parties in interest, including the affiant.

**CONFLICT OF INTEREST**

The undersigned Respondent and each person signing on behalf of the Respondent certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of A&M System, nor any employee, or person, whose salary is payable in whole or in part by A&M System, has a direct or indirect financial interest in the award of this Proposal, or in the services to which this Proposal relates, or in any of the profits, real or potential, thereof, except as noted otherwise herein.

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Date \_\_\_\_\_

Notary \_\_\_\_\_

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2024.

Notary Public in and for the County of \_\_\_\_\_, State of

\_\_\_\_\_. My commission expires: \_\_\_\_\_

## EXHIBIT C INSURANCE

The Respondent shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, A&M System shall not be deemed or construed to have assessed the risk that may be applicable to Respondent under this Agreement. Respondent shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Respondent is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

<u>Coverage</u>	<u>Limit</u>
<b>1. <u>Worker's Compensation</u></b>	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident \$1,000,000 Disease/Employee \$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for A&M System. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

**2. Automobile Liability**

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

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

**3. Commercial General Liability**

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures Respondent's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

**4. Cyber Liability**

Contractor shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data,

infringement of intellectual property, invasion of privacy and breach of data. Cyber Liability policy with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this **agreement and shall include, but not limited to, claims involving infringement of intellectual property**, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security.

The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. Such insurance shall be maintained and in force at all times during the term of the agreement and for a period of two years thereafter for services completed during the term of the agreement. [SYSTEM AND/OR MEMBER] shall be given at least 30 days notice of the cancellation or expiration of the aforementioned insurance for any reason.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the System and its members require and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the System and its members.

5. **Additional Endorsements**

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and the Respondent as additional insureds.

6. Respondent will deliver to A&M System:

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

**All insurance policies**, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and A&M System as Additional Insureds up to the actual liability limits of the policies maintained by Respondent. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

**All insurance policies** will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and A&M System. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

**All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section.

Any deductible or self-insured retention must be declared to and approved by A&M System prior to

the performance of any services by Respondent under this Agreement. Respondent is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

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

The Texas A&M University System  
301 Tarrow Street  
College Station, TX 77840  
Attn: Jeff Zimmermann  
Facsimile Number: 979-458-6101  
Email Address: [jzimmermann@tamus.edu](mailto:jzimmermann@tamus.edu)

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by A&M System in writing.

**EXHIBIT D**  
**REQUIRED CONTRACT TERMS**  
**DRAFT – NOT FOR EXECUTION**

**SERVICES AGREEMENT**  
**BY AND BETWEEN**  
**THE TEXAS A&M UNIVERSITY SYSTEM**  
**AND [PROVIDER]**

This Services Agreement (“Agreement”) is entered into and effective \_\_\_\_\_ (the “Effective Date”), by and between The Texas A&M University System, an agency of the state of Texas (hereafter referred to as “A&M SYSTEM”), and \_\_\_\_\_, a \_\_\_\_\_ (hereafter referred to as “PROVIDER”). A&M SYSTEM and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively.

A&M SYSTEM and PROVIDER hereby agree as follows:

**1. SERVICES**

- A. PROVIDER hereby grants the A&M System a non-exclusive, non-sublicenseable right and license to access and use PROVIDER’s platform and other services set forth in Exhibit A, Scope of Services, attached hereto (“Services”), in accordance with the terms and subject to the conditions contained in this Agreement. PROVIDER will issue user IDs to the A&M System to access and use the Services. PROVIDER will make the Services available to the A&M System in accordance with the Service Level Agreement attached hereto as Exhibit B.
- B. PROVIDER will perform the Services in accordance with the standards of care, skill, and diligence expected of a qualified, competent and experienced professional in the provision of the type of services required under this Agreement.
- C. PROVIDER will perform the Services substantially in accordance with PROVIDER’s marketing materials and documentation, including without limitation, any user guides, technical specifications, training materials, instructions, documented policies or other written materials regarding the Services that are posted, delivered or otherwise made available by PROVIDER to MEMBER.
- D. PROVIDER represents and warrants that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent PROVIDER’s performance of the Services.
- E. PROVIDER’s performance of the Services will (1) conform to the specifications and requirements of Request for Proposal No. \_\_\_\_\_ (the “RFP”), which is incorporated by reference for all purposes, and (2) to the extent consistent with the RFP, will conform with PROVIDER’s proposal, dated \_\_\_\_\_ (“PROVIDER’s Proposal”) which was submitted by PROVIDER in response to the RFP and is incorporated by reference for all purposes. To the extent that the RFP or PROVIDER’s Proposal conflict with the terms of this Agreement, the terms of this Agreement will control.

**2. TERM AND TERMINATION**

- A. This Agreement will commence on the Effective Date and continues through \_\_\_\_\_ (the "Term"), unless earlier terminated as provided herein. The Term of the Agreement may be extended for \_\_\_\_ (\_\_) additional \_\_\_\_ (\_\_) year periods upon mutual written agreement executed by the Parties, provided that the total term of the Agreement shall not exceed five (5) years.
- B. In the event of a breach of a material term of this Agreement by a Party, the non-defaulting Party may terminate this Agreement upon \_\_\_\_ (\_\_) days' prior written notice to the other Party detailing the nature of the breach and the other Party fails to fully cure the breach within such \_\_\_\_-day period. In the event that the A&M System terminates this Agreement pursuant to this Section, the A&M System shall receive a pro-rata refund of any pre-paid amounts.
- C. The A&M System may terminate this Agreement without cause upon \_\_\_\_ (\_\_) days' prior written notice to PROVIDER.
- D. The A&M System may immediately terminate this Agreement if (i) the PROVIDER's insurance coverage required under this Agreement is cancelled or non-renewed; or (ii) the PROVIDER declares bankruptcy, is placed into involuntary bankruptcy or receivership or becomes insolvent.

### 3. PAYMENT TERMS

- B. In full consideration for the Services rendered by PROVIDER under this Agreement, the A&M System shall pay PROVIDER in accordance with the terms set forth in Exhibit C, Payment Terms, attached hereto. The total compensation to PROVIDER under this Agreement will not exceed \_\_\_\_\_ dollars (\$\_\_\_\_) without an amendment to this Agreement.
- A. The A&M System will make payment on a properly prepared and submitted invoice in accordance with Chapter 2251, *Texas Government Code* (Texas Prompt Payment Act), which shall govern remittance of payment and remedies for late payment and non-payment.
- B. All payments will be made by electronic direct deposit. PROVIDER is required to complete and submit to the A&M System a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at:  
<https://www.tam.us.edu/business/budgets-and-accounting/accounting/general/>
- C. As an agency of the State of Texas, the A&M System is tax exempt. Tax exemption certification will be furnished to PROVIDER upon request.

### 4. DATA PRIVACY AND SECURITY

- A. The A&M System shall retain all right, title, and interest in and to all information, data or other content that the A&M System or its employees, contractors, students, or any other third party on behalf of the A&M System enter, submit or upload to Services or otherwise provide to PROVIDER under this Agreement (collectively, the "A&M System Data").
- B. PROVIDER shall safeguard and maintain the confidentiality of the A&M System Data in accordance with applicable federal, state, and local laws, rules, and regulations.

PROVIDER shall only use or disclose A&M System Data for the purpose of fulfilling PROVIDER's obligations under this Agreement, as required by law, or as otherwise authorized in writing by the A&M System. PROVIDER shall restrict disclosure of A&M System Data solely to those employees, subcontractors or agents of PROVIDER that have a need to access A&M System Data for PROVIDER to perform its obligations under this Agreement. PROVIDER shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on PROVIDER in this Agreement and PROVIDER agrees that it shall be responsible for its subcontractors' and agent' compliance with such regulations.

- C. PROVIDER must promptly notify the A&M System of any legal request for A&M System Data from a third party and take (and assist the A&M System in taking) appropriate steps not to disclose such A&M System Data.
- D. PROVIDER shall, within two (2) business days of discovery, report to the A&M System any use or disclosure of A&M System Data not authorized by this Agreement or in writing by A&M System. PROVIDER's report must identify: (a) the nature of the unauthorized use or disclosure, (b) the A&M System Data used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure (if known), (d) what PROVIDER has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action PROVIDER has taken or will take to prevent future similar unauthorized use or disclosure. PROVIDER shall provide such other information, including a written report, as reasonably requested by the A&M System.
- E. Within thirty (30) days of the expiration or termination of this Agreement, PROVIDER, as directed by the A&M System, shall return in acceptable electronic format all A&M System Data in its possession (or in the possession of any of its subcontractors or agents) to the A&M System or, at the A&M System's option, delete all such A&M System Data, if return is not feasible. PROVIDER shall provide the A&M System with at least ten (10) days' written notice of PROVIDER's intent to delete such A&M System Data, and shall confirm such deletion in writing.

## **5. CONFIDENTIALITY**

- A. The Parties anticipate that under this Agreement it may be necessary for a Party (the "Disclosing Party") to transfer information of a confidential nature ("Confidential Information") to the other Party (the "Receiving Party"). The Disclosing Party shall clearly identify Confidential Information at the time of disclosure by (i) appropriate stamp or markings on the document exchanged, or (ii) written notice, with attached listings of all material, copies of all documents, and complete summaries of all oral disclosures (under prior assertion of the confidential nature of the same) to which each notice relates, delivered within thirty (30) days of the disclosure to the other party.
- B. "Confidential Information" does not include information that: (i) is or becomes publicly known or available other than as a result of a breach of this Agreement by the Receiving Party; (ii) was already in the possession of the Receiving Party as the result of disclosure by an individual or entity that was not then obligated to keep that information confidential; (iii) the Disclosing Party had disclosed or discloses to an individual or entity without confidentiality restrictions; or (iv) the Receiving Party had developed or develops

independently before or after the Disclosing Party discloses equivalent information to the Receiving Party.

- C. The Receiving Party shall handle Confidential Information with the same care that the Receiving Party uses to protect its own information of comparable sensitivity, but not less than reasonable care. The Receiving Party may use Confidential Information only for purposes of performing its obligations under this Agreement and may disclose Confidential Information only to the Receiving Party's employees, contractors, agents, and other representatives ("Representatives") having a need to know the Confidential Information to fulfill the Receiving Party's obligations under this Agreement, provided that they are subject to confidentiality obligations not less restrictive than those set forth herein, and the Receiving Party remains responsible for its Representatives' compliance with the obligations under this Section.
- D. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized disclosure, misappropriation, or misuse of Confidential Information and shall take prompt and effective steps to prevent a recurrence of such misappropriation or misuse.
- E. If the Receiving Party is legally required to disclose Confidential Information, the Receiving Party shall, to the extent allowed by law, promptly give the Disclosing Party written notice of the requirement so as to provide the Disclosing Party a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If the Receiving Party complies with the terms of this Section, disclosure of that portion of the Confidential Information, which the Receiving Party is legally required to disclose, will not constitute a breach of this Agreement.
- F. The Receiving Party shall, upon request of the Disclosing Party, promptly return or destroy all materials embodying Confidential Information other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense, except that the Receiving Party may securely retain one (1) copy in its files solely for record purposes. The Receiving Party's obligations as to Confidential Information will survive the termination or expiration of this Agreement for a period of one (1) year.

## **6. INTELLECTUAL PROPERTY**

- A. PROVIDER shall retain all rights, title, and interest in and to the Services. PROVIDER represents and warrants that: (i) it has the full right, power, and authority to grant the rights and licenses to Members; (ii) the Services do not infringe upon or violate any copyright, patent, trademark, or other proprietary or intellectual property rights of any third party; (iii) the Services will perform substantially in accordance with PROVIDER's marketing materials and documentation, including without limitation, any user guides, technical specifications, training materials, instructions, documented policies or other written materials regarding the Services that are posted, delivered or otherwise made available by PROVIDER to the A&M System; and (iv) PROVIDER and each of its employees, subcontractors, or agents who will perform the Services has the necessary knowledge, skill, experience, and qualifications to provide and perform the Services in accordance with this Agreement, and the Services will be performed for and delivered to the A&M System in a diligent, professional, workmanlike manner in accordance with industry standards.

- B. Subject to the statutory duties of the Texas Attorney General, PROVIDER shall indemnify, defend and hold harmless the A&M System, its regents, employees, and agents (collectively, the "A&M System Indemnitees") from any Claim arising from or related to an allegation that any of the Services infringe upon, misappropriate, or otherwise violate the intellectual property rights of a third party ("Infringement Claim"). If the Services become or are likely to become the subject of an Infringement Claim, then PROVIDER may, at its expense and option, either: (a) replace or modify the Services to make them non-infringing, while maintaining equivalent functionality; (b) procure for the A&M System the right to continue using the Services pursuant to this Agreement; or (c) terminate this Agreement and refund the A&M System, on a pro-rata basis, the amount of any prepaid fees.

## 6. COMPLIANCE WITH LAWS

- A. PROVIDER shall comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement.
- B. Each Party shall comply with U.S. export control regulations. If either Party desires to disclose to the other Party any information, technology, or data that is identified on any U.S. export control list, the disclosing Party shall advise the other Party at or before the time of intended disclosure and may not provide export-controlled information to the other Party without the written consent of the other Party. PROVIDER certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.
- C. If applicable, for purposes of the Family Educational Rights and Privacy Act ("FERPA"), the A&M System hereby designates PROVIDER as a school official with a legitimate educational interest in any education records (as defined in FERPA) that PROVIDER is required to create, access, receive, or maintain to fulfill its obligations under this Agreement. PROVIDER shall comply with FERPA as to any such education records and is prohibited from redisclosure of the education records except as provided for in this Agreement or otherwise authorized by FERPA or the A&M System in writing. PROVIDER is only permitted to use the education records for the purpose of fulfilling its obligations under this Agreement and shall restrict disclosure of the education records solely to those employees, subcontractors or agents who have a need to access the education records for such purpose. PROVIDER shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on PROVIDER in this Section, including without limitation, the prohibition on redisclosure. PROVIDER shall implement and maintain reasonable administrative, technical, and physical safeguards to secure the education records from unauthorized access, disclosure or use.

## 14. INDEMNIFICATION

Subject to the statutory duties of the Texas Attorney General, PROVIDER shall indemnify, defend and hold harmless the A&M System Indemnitees from and against any third-party claim, damage, liability, expense or loss asserted against the A&M System Indemnitees (each, a "Claim") arising out of (i) PROVIDER's negligent or willful errors or omissions under this Agreement, or (ii)

PROVIDER's breach of any representation or warranty contained herein.

## 12. INSURANCE

Insurance requirements as stated within Exhibit D, attached hereto.

## 3. INFORMATION TECHNOLOGY

- A. **Electronic and Information Resources.** PROVIDER represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to the A&M System under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code) (the "EIR Accessibility Warranty"). If PROVIDER becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, PROVIDER shall, at no cost to the A&M System, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that PROVIDER fails or is unable to do so, the A&M System may immediately terminate this Agreement, and PROVIDER will refund to the A&M System all amounts paid by the A&M System under this Agreement within thirty (30) days following the effective date of termination.
- B. **Access to Agency Data.** Pursuant to Section 2054.138, Texas Government Code, PROVIDER shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, the security control baseline required by the then-current risk and authorization management program established by the Texas Department of Information Resources ("TX-RAMP"), to safeguard and preserve the confidentiality, integrity, and availability of A&M SYSTEM Data ("Security Controls"). Upon written request by the A&M System, PROVIDER shall provide the A&M System with evidence or a copy of the certification of its compliance with the Security Controls within thirty (30) days of such request.
- C. **Cloud Computing Services.** As of the Effective Date, PROVIDER represents and warrants that it complies with the then-current requirements of TX-RAMP. Pursuant to Section 2054.0593, Texas Government Code, PROVIDER shall maintain TX-RAMP compliance and certification, as may be amended from time to time, throughout the Term, including any renewal term of this Agreement. PROVIDER shall provide the A&M System with evidence of its TX-RAMP compliance and certification within thirty (30) days of the A&M System's request and at least thirty (30) days prior to the start of any renewal term of this Agreement. In the event that PROVIDER fails to maintain TX-RAMP compliance and certification throughout the Term, including any renewal term, the A&M System may immediately terminate this Agreement, and PROVIDER will provide a refund to the A&M System of any prepaid fees.
- D. **Cybersecurity Training Program.** Pursuant to Section 2054.5192, Texas Government Code, PROVIDER and its employees, officers, and subcontractors who have access to the A&M System's computer system and/or database must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, and selected by the A&M System. The cybersecurity training program must be completed by PROVIDER and

its employees, officers, and subcontractors during the Term and any renewal period of this Agreement. PROVIDER shall verify completion of the program in writing to the A&M System within the first thirty (30) calendar days of the Term and any renewal period of this Agreement. PROVIDER acknowledges and agrees that its failure to comply with the requirements of this Section are grounds for the A&M System to terminate this Agreement for cause.

#### 4. MISCELLANEOUS

- A. **Entire Agreement.** This Agreement constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding, written or oral agreements between the Parties, or “side deals” which are not described in this Agreement. This Agreement may be amended only by a subsequent written agreement signed by authorized representatives of both parties. In the event of a conflict between the terms of this Agreement and any other documents constituting part of this Agreement, the terms of this Agreement shall control.
- B. **Authority to Contract.** Each Party represents and warrants that it has full right, power and authority to enter into and perform its obligations under this Agreement, and that the person signing this Agreement is duly authorized to enter into this Agreement on its behalf.
- C. **Representations & Warranties.** If PROVIDER is a business entity, PROVIDER warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that 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 PROVIDER has been duly authorized to act for and bind PROVIDER.
- D. **Independent Contractor.** Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by PROVIDER’s Service to the A&M System. Except as specifically required under the terms of this Agreement, PROVIDER (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of the A&M System. As an independent contractor, PROVIDER is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers’ compensation insurance. PROVIDER and its employees shall observe and abide by all applicable policies, regulations, rules and procedures of the A&M System and its members, including those applicable to conduct on its premises.
- E. **Use of Name.** Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its “Marks”), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading. The Parties will mutually agree in advance upon any public announcements, or communications to the media regarding this Agreement or the Services to be provided pursuant to this Agreement.
- F. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under

this Agreement without the prior written consent of the A&M System.

- G. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- H. **Survival.** Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.
- I. **Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).
- J. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed given: (i) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (ii) the next business day after it is sent by overnight carrier, (iii) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (iv) on the date of delivery if delivered personally. A&M SYSTEM and PROVIDER can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

A&M SYSTEM:           The Texas A&M University System  
                                  301 Tarrow St., Suite 273  
                                  College Station, Texas 77840  
                                  Attention: Jeff Zimmermann  
                                  Phone: (979) 458-6410  
                                  E-mail: jzimmermann@tamus.edu

PROVIDER:           [ \_\_\_\_\_ ]  
                                  [ \_\_\_\_\_ ]  
                                  Attention: \_\_\_\_\_  
                                  Phone: \_\_\_\_\_

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

- K. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- L. **Venue.** Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal proceedings against the A&M System is to be in the county in which the principal office of the A&M System's governing officer is located.
- M. **Non-Waiver.** The A&M System is an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the state of Texas. PROVIDER expressly acknowledges that the A&M System is an agency of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by the A&M System of its right to claim such exemptions, remedies, privileges, and immunities as may be provided by law, including the sovereign immunity of the A&M System.
- N. **Dispute Resolution.** To the extent that Chapter 2260, Texas Government Code is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the A&M System and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to the Contracts Officer of the A&M System, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim. This provision and nothing in this Agreement waives the A&M System's sovereign immunity to suit or liability, and the A&M System has not waived its right to seek redress in the courts.
- O. **Public Information Act.** PROVIDER acknowledges that the A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon the A&M System's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of the A&M System to the A&M System in a non-proprietary format acceptable to the A&M System that is accessible by the public. PROVIDER acknowledges that the A&M System may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and PROVIDER agrees that this Agreement can be terminated if PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.
- P. **Certification Regarding Business with Certain Countries and Organizations.** PROVIDER represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, Texas Government Code. PROVIDER acknowledges this Agreement may be terminated immediately if this certification is inaccurate.

- Q. **Certification Regarding Products from the Gaza Strip.** To the extent that PROVIDER is providing goods to the A&M System under this Agreement, PROVIDER represents and warrants that the goods are not produced in or exported from the Gaza Strip or from any organization or state actor with ties to Hamas.
- R. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, Texas Family Code, PROVIDER certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- S. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- T. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- U. **HUB Subcontracting Plan.** It is the policy of the state of Texas and the A&M System to encourage the use of Historically Underutilized Businesses ("HUB") in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in the A&M System contracting and purchasing. PROVIDER has indicated it will not subcontract any of its duties or obligations under this Agreement. If PROVIDER will subcontract any of its duties and obligations under this Agreement, PROVIDER will be required to provide prior written notice to the A&M System and make a good faith effort to submit a HUB subcontracting plan as required under Section 20.285 of the Texas Administrative Code.
- V. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Chapter 2271, Texas Government Code, is applicable to this Agreement, PROVIDER certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- W. **Verification Regarding Discrimination Against Firearm Entities and Trade Associations.** To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, PROVIDER verifies that (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm

trade association.

- X. **Verification Regarding Boycotting Energy Companies.** To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, PROVIDER verifies that (1) it does not boycott energy companies, and (2) it will not boycott energy companies during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld of this verification is inaccurate.
- Y. **Loss of Funding.** Performance by the A&M System under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, the A&M System will issue written notice to PROVIDER and the A&M System may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of the A&M System. In the event of a termination or cancellation under this Section, the A&M System will not be liable to PROVIDER for any damages that are caused or associated with such termination or cancellation.
- Z. **Prior Employment.** PROVIDER acknowledges that Section 2252.901, Texas Government Code, prohibits the A&M System from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by the A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement. If PROVIDER is an individual, by signing this Agreement, PROVIDER represents and warrants that it is not a former or retired employee of the A&M System that was employed by the A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement.
- AA. **Conflict of Interest.** PROVIDER certifies, to the best of their knowledge and belief, that no member of the A&M System's Board of Regents, nor any officer of A&M SYSTEM, has a direct or indirect financial interest in PROVIDER or in the transaction that is the subject of the Agreement.
- BB. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- CC. **Not Eligible for Rehire.** PROVIDER is responsible for ensuring that its employees involved in any work being performed for the A&M System under this Agreement have not been designated as "Not Eligible for Rehire" as defined in System policy 32.02, *Discipline and Dismissal of Employees*, Section 4 ("NEFR Employee"). In the event the A&M System becomes aware that PROVIDER has a NEFR Employee involved in any work being performed under this Agreement, the A&M System will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by the A&M System.

(SIGNATURES TO FOLLOW ON NEXT PAGE)

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

**The Texas A&M University System**

**[PROVIDER]**

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

EXHIBIT A - SCOPE OF SERVICES

EXHIBIT B - SERVICE LEVEL AGREEMENT

EXHIBIT C - PAYMENT TERMS

EXHIBIT D - INSURANCE