

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND THE CHERTOFF GROUP

This Services Agreement (“Agreement”) is entered into and effective November 1, 2017 (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “The A&M System”), an agency of the state of Texas, and The Chertoff Group (hereafter referred to as “PROVIDER” or “TCG”). The A&M System and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

The A&M System and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

PROVIDER will work with The A&M System to provide strategy consulting services to support efforts essential to establish a fully instrumented “Smart City” test bed at the RELLIS Campus in support of the cyber security initiatives of the A&M System. The services included (but not limited to) in the scope of this Agreement are listed in Exhibit A, attached hereto.

2. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin November 1, 2017 and will extend for one (1) year, for Phase I. Any extensions or amendments for Phase II and III 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 PROVIDER.

3. PAYMENT TERMS

- A. For Phase I of the services rendered under this Agreement, The A&M System shall pay PROVIDER \$10,000 per month, inclusive of any business related cost, unless otherwise authorized, with a maximum fee under the initial term of this contract of \$120,000. PROVIDER can invoice The A&M System monthly for the Scope of Work identified in Section 1.
- B. PROVIDER shall invoice The A&M System monthly for the Scope of Work identified in Section 1. Payment will be made to PROVIDER upon approval of such invoice by The A&M System. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment.
- C. All payments shall 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.tamus.edu/business/budgets-and-accounting/accounting/general/> .
- D. All invoices must reference The A&M System purchase order number (which will be provided to PROVIDER within 15 days of the execution of this Agreement) and

description of services provided to include but not limited to time, deliverables, and activities.

4. DEFAULT AND TERMINATION

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, The A&M System may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of The A&M System.
- B. The A&M System may terminate this Agreement at any time upon seven (7) days prior notice to PROVIDER. Upon termination, all approved outstanding fees and expenses shall become immediately due and payable by the A&M System to PROVIDER. Payment will be made as per Section 3 of this Agreement.

5. PUBLIC INFORMATION

- A. 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.
- B. Upon The A&M System's written request, PROVIDER will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, *Texas Government Code*, to The A&M System in a non-proprietary format acceptable to The A&M System. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which The A&M System has a right of access.
- C. 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*.

6. DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, 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 Billy Hamilton, Executive Vice Chancellor and Chief Financial Officer for The A&M System, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

7. INSURANCE

This process is described in Exhibit B, attached hereto.


8. MISCELLANEOUS

- A. **Indemnification. To the extent permitted by the constitution and the state laws of Texas, PROVIDER agrees to indemnify and hold harmless The A&M System from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER's negligent or willful errors or omissions under this Agreement.**
- B. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of The A&M System. The A&M System will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. PROVIDER shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of The A&M System relative to conduct on its premises.
- C. **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. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 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.
- E. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits The A&M System from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- F. **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.
- G. **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.

- H. **Entire Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- I. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- K. **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.
- L. **HUB Subcontracting Plan.** If a subcontractor will be used to provide any commodity or service as part of the scope on a specific assignment, the PROVIDER will be required to make a good faith effort and complete the state of Texas HSP found at <https://www.tamus.edu/business/hub-procurement/hub-programs-3/system-offices-hub-program/>. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be expected to make a good faith effort according to the HSP instructions.
- In the event that you determine you will be using a subcontractor, please contact Mr. Jeff Zimmermann from The A&M System's HUB Program at (979) 458-6410 or zimmermann@tamus.edu for assistance in determining available HUB subcontractors and proper completion of the HSP.
- M. **Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
- N. **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.
- O. **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.

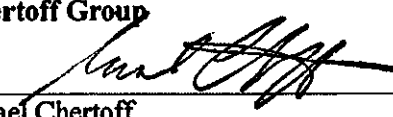
IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

The Texas A&M University System

By 
Billy Hamilton
Exec Vice Chancellor & Chief Financial Officer

10/3/17
Date

The Chertoff Group

By 
Michael Chertoff
Executive Chairman

10/10/17
Date

EXHIBIT A – SCOPE OF WORK

TCG proposes a three-phased advisory engagement in support of Texas A&M's objectives. Phase I will begin in November 1, 2017 and will span 12 months, while Phase II & III will be negotiated at the completion of Phase I at the Client's convenience. Phase I will focus on advising Texas A&M on the architecture development of a cyber-physical test platform at RELLIS. Below is a summary outline of the three-phased approach:

PROPOSED SCOPE OF WORK

Phase I: Architecture Development of a Cyber-Physical Test Platform

Task A: Market Survey – Defining of Architectural Requirements

- TCG will assess the state-of-the-practice of existing test beds for critical infrastructure (cyber-physical) test environments with a goal to determine existing gaps that Texas A&M can fill for the ecosystem. A subset of this architectural definition involves cyber-physical infrastructure for Smart City technologies and applications. With the goal being to obtain funding for such an R&D environment, TCG will assess the existing work in Smart City test beds to determine if such an environment is a viable option for the Texas A&M RELLIS Campus.

Task B: RELLIS High-level Architecture Design

- Based on the results of the Task 2A efforts, TCG will assist Texas A&M in the development of high level architectural designs concepts for the over-arching Critical Infrastructure cyber-physical platform and the Smart City R&D Fabric.
- TCG will act as an Advisor to Texas A&M for the search and hiring process of a full-time cyber architect or will choose a sub-contractor to facilitate the development of the high-level architectural and functional requirements for RELLIS to become a fully instrumented test bed.
- TCG will work alongside the cyber architect in the implementation of the over-arching architectural requirements for RELLIS.

Task C: Smart City Test Fabric Engagement Strategy

- TCG will use its knowledge of the Smart City technology space to develop an engagement strategy for obtaining funding for a notional smart city test environment on the RELLIS Campus.

Phase II: Development of Thought-leadership (Contingent on the completion of Phase I)

Task A: Cyber-Physical Security for Critical Infrastructure

Task B: Resilient Smart City Concepts

Phase III: Development of a DHS Business Strategy (To be negotiated at the completion of Phase II)

Task A: Positioning Review and Market Shaping of Texas A&M's Core Offerings Specifically for DHS

- TCG will conduct an initial review and evaluation of Texas A&M's existing government business strategy in order to gain a more comprehensive understanding of Texas A&M's current approach to the Federal sector and desired approach to DHS. This will include an analysis of Texas A&M's capabilities and TCG will leverage its public and private sector expertise to recommend enhancements or modifications as appropriate.

- TCG will engage with key stakeholders and senior officials at DHS and relevant components to better understand their current priorities, potential emerging needs and requirements, and budget limitations.

Task B: Federal Engagement Strategy Development and Execution

- TCG will help Texas A&M develop and execute a sustained campaign of targeted outreach and brand-building to enhance Texas A&M's opportunities for funding with DHS and other Federal agencies as practicable.
 - TCG will use its knowledge of DHS R&D priorities and strategies and data gathering from Task 1A to determine best targets for grant funding opportunities.
 - TCG will promote Texas A&M's brand recognition across DHS to ensure that decision-makers and stakeholders appreciate Texas A&M's differentiated capabilities.
 - TCG will assist in framing Texas A&M's offerings through thought-leadership (i.e. Australia Smart City Conference).

EXHIBIT B – INSURANCE

PROVIDER 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 The A&M System. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER 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 The A&M System at least ten days before the effective date of the cancellation.

Insurance:

<u>Coverage</u>	<u>Limit</u>
A. <u>Worker's Compensation</u>	
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 The A&M System. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

B. **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.

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 as additional insured's.

C. <u>Commercial General Liability</u>	
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 PROVIDER's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement

D. Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of PROVIDER 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, PROVIDER agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years 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 three (2) years after the expiration of cancellation of this Agreement.

E. PROVIDER will deliver to The 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 PROVIDER 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 and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER. 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 and The Texas A&M University System. No policy will be canceled without unconditional written notice to The 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 The 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 11.

Any deductible or self-insured retention must be declared to and approved by The A&M System prior to the performance of any services by PROVIDER under this Agreement. PROVIDER 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 The A&M System contact in Section 8U.

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