

AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND CBRE, INC.

This Services Agreement ("Agreement") is entered into and effective upon date of last signature (the "Effective Date"), by and between The Texas A&M University System Offices (hereafter referred to as "TAMUS"), an agency of the state of Texas, and CBRE, Inc., a Delaware corporation, having an office at 2575 East Camelback Road, Suite 500 Phoenix, Arizona 85016 (hereafter referred to as "PROVIDER"). 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 services related to the Data Center on the TAMUS RELLIS campus as further defined in the Scope of Work ("Scope of Work" or "Services") as further outlined and described in Exhibit B, attached hereto.

2. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin on the Effective Date, and will terminate upon completion of the Scope of Work, or ninety (90) days after the Effective Date. The parties can agree to extension(s) of this Agreement as needed to complete the Scope of Work. Any extensions or renewals shall be at the same terms and conditions, plus any approved changes to be determined by TAMUS and negotiated in writing with the PROVIDER.

3. PAYMENT TERMS

- A. For the services rendered under this Agreement, TAMUS shall pay PROVIDER \$75,000, with \$30,000 due from TAMUS to PROVIDER within ten (10) days of the final execution of this Agreement. The total amount due under this Agreement is exclusive of travel expenses.
- B. PROVIDER shall invoice TAMUS upon completion and acceptance of the final deliverable. For reimbursement of travel expenses, PROVIDER'S invoice(s) must include supporting documents. Payment will be made to PROVIDER upon approval of such invoice by TAMUS. 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. Business-related travel, lodging and/or meal expenses will be reimbursed by TAMUS according to the State of Texas rates, rules, and regulations (<http://www.window.state.tx.us//procurement/prog/stmp/>), provided that such travel by PROVIDER is approved in advance in writing. PROVIDER is required to submit all

travel receipts when requesting reimbursement. Under no circumstance will the PROVIDER be reimbursed for alcohol purchases. State travel rates are subject to change without notice and will be adjusted accordingly. Mileage rates will be calculated from point-to-point (PROVIDER's place of business to job site) using the State of Texas mileage. Should the contract be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.

- D. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to TAMUS 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/> .
- E. All invoices must reference the TAMUS 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, TAMUS 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 TAMUS.
- B. TAMUS may terminate this Agreement at any time upon seven (7) days prior notice to PROVIDER. Upon the expiration or any termination, TAMUS shall pay PROVIDER all fees and expenses accrued hereunder the date of expiration or any termination, as the case may be.

5. CONFIDENTIALITY

During the course of this Agreement, each party may be given access to information that (a) relates to the other's past, present and future development, business activities, products, services and technical knowledge, and (b) has been identified as confidential and/or proprietary ("Confidential Information"). The Confidential Information of the other party may be used by the receiver only in connection with the Scope of Work. Each party agrees to protect the confidentiality of the Confidential Information of the other in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind. Access to the Confidential Information shall be restricted to those providing services under the Scope of Work. The Confidential Information may not be copied or reproduced without the discloser's prior written consent. All Confidential Information made available hereunder, including copies thereof, shall be returned upon the first to occur: (a) completion of the Scope of Work, or (b) request by the discloser. PROVIDER may retain, however, subject to the terms of this Section, copies of the Confidential Information required for future services provided within the Scope of Work. Nothing in this Agreement shall prohibit or limit either party's use of information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (i) previously known to it, (ii) independently developed by it, (iii) acquired by it from a third party which is not, to the acquirer's knowledge, under an obligation not to disclose such information,

or (iv) which is or becomes publicly available through no breach of this Agreement. In the event either party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information of the other party, it shall provide prompt notice to the other of such receipt. The party receiving the subpoena shall thereafter be entitled to comply with such subpoena or other process to the extent permitted by law. Notwithstanding, the foregoing, PROVIDER acknowledges that TAMUS 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 further outlined in Section 6 below.

6. PUBLIC INFORMATION

- A. PROVIDER acknowledges that TAMUS 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 TAMUS'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 TAMUS in a non-proprietary format acceptable to TAMUS. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which TAMUS has a right of access.
- C. PROVIDER acknowledges that TAMUS 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*.

7. ASSIGNMENT AND SUBCONTRACTING

The Agreement may not be assigned in whole or in part by PROVIDER. Subcontracting of any work to be performed under this Agreement by PROVIDER shall only be permitted upon written approval of TAMUS.

8. 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 TAMUS 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 TAMUS, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

9. INSURANCE

- A. This process is described in Exhibit A, attached hereto.

10. WARRANTY

PROVIDER warrants that its Services will be performed in a good and workmanlike manner and in accordance with the standards set forth in this Agreement including the SOW. THE PRECEDING IS PROVIDER'S ONLY WARRANTY CONCERNING THE SERVICES, DELIVERABLES AND ANY OTHER WORK PRODUCT AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT OR OTHERWISE, ALL OF WHICH ARE DISCLAIMED.

11. PROVIDER NOT AN ACCOUNTANT OR TAX ADVISER

TAMUS acknowledges and agrees that neither PROVIDER nor any affiliate of any thereof is making any representation, nor is it required to make any disclosure, now or in the future, with respect to TAMUS's tax or accounting treatment of the transactions contemplated hereby, nor is PROVIDER or any affiliate of any thereof responsible, nor will it be responsible in the future, for tax and/or accounting advice with respect to the transactions contemplated hereby. TAMUS further acknowledges and agrees that TAMUS has had and will have the benefit of the advice of its own independent tax, accounting and legal advisors with respect to such matters. In its provision of Services to TAMUS under this Agreement, PROVIDER shall assume that all information, documentation, estimates and opinions furnished to PROVIDER and its affiliates by TAMUS or by third parties are reliable, accurate, true, correct and complete, and PROVIDER shall incur no liability to TAMUS with respect to any error, misstatement, inaccuracy or incompleteness of any such item.

12. RIGHTS IN DELIVERABLES

The Deliverables prepared by PROVIDER under this Agreement shall be considered a work for hire and ownership of such Deliverables shall, upon final payment, be retained by TAMUS. In the course of performance hereunder, both parties may use, subject to the confidentiality obligations of Section 5 above, the other party's Confidential Information. Except as provided in this Section, neither party shall have or obtain rights in such Confidential Information or other intellectual property of the other party (or in any modifications or enhancements to them) (collectively, "Intellectual Property"), except to the extent necessary for PROVIDER to complete its Services pursuant to this Agreement. To the extent that any of PROVIDER's Intellectual Property is incorporated in the Deliverables developed in the course of the Services, whether individually by PROVIDER or jointly with TAMUS, then upon final payment by TAMUS, TAMUS shall have a non-exclusive, worldwide, royalty-free, non-transferable right and license to use such Intellectual Property of PROVIDER, but only to the extent reasonably necessary for TAMUS to continue to use or access the Deliverable for the purposes for which it was developed to facilitate business continuity. To the extent any Deliverables contain PROVIDER Confidential Information, they shall be subject to the confidentiality obligations of Section 5 above. Except solely to the extent of such license, TAMUS shall not have or acquire any right, claim, title or interest in or to any of PROVIDER's Intellectual Property. Notwithstanding any provision hereof to the contrary, nothing contained in this Agreement is intended to confer upon TAMUS any rights in or to PROVIDER's proprietary software. Further, nothing contained in this Agreement shall preclude PROVIDER from providing to third parties services and/or deliverables similar to the Services and/or Deliverables provided hereunder, provided that in so doing, PROVIDER does not use or disclose any Confidential Information of TAMUS. TAMUS further acknowledges and agrees that neither all nor any part of the contents of any Deliverable

or a copy thereof (including conclusions as to property value or the identity of PROVIDER) shall be used for any purpose by anyone but TAMUS without the prior written consent of PROVIDER. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section, the provisions of which shall survive the expiration or termination of this Agreement.

13. MISCELLANEOUS

- A. **Indemnification. PROVIDER agrees to indemnify and hold harmless TAMUS 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 TAMUS. TAMUS 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 TAMUS 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 TAMUS 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. **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.
- L. **Loss of Funding.** Performance by TAMUS 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, TAMUS will issue written notice to PROVIDER and TAMUS may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of TAMUS.
- M. **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.
- N. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against TAMUS shall be in the county in which the primary office of the chief executive officer of TAMUS is located, which is Brazos County, Texas.
- O. **Non-Waiver.** PROVIDER expressly acknowledges that TAMUS is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMUS of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- P. **Conflict of Interest.** By executing this Agreement, PROVIDER and each person signing on behalf of PROVIDER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their

knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

- Q. **Prohibition on Contracts with Companies Boycotting Israel.** By executing this Agreement, the PROVIDER certifies it does not and will not, during the performance of this contract, boycott Israel. PROVIDER acknowledges this Agreement may be terminated if this certification is inaccurate.
- R. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, PROVIDER certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. PROVIDER acknowledges this Agreement may be terminated if this certification is inaccurate.
- S. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TAMUS 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:

TAMUS: The Texas A&M University System
301 Tarrow St., Suite 361
College Station, Texas 77840
Attention: Jeff Zimmermann
Phone: (979) 458-6410
Fax: (979) 458-6250
E-mail: jzimmermann@tamus.edu

PROVIDER: CBRE, Inc.
2575 East Camelback Road
Suite 500
Phoenix, Arizona 85016
Attention:
Phone:
Fax:
Email:

With a Copy to: CBRE, Inc.
2001 Ross Avenue
Suite 3400
Dallas, Texas 75201
Attn: Division General Counsel

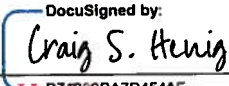

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

The Texas A&M University System

By 
Jeff Zimmermann
Director, Procurement & Business Services

2/9/2018
Date

CBRE, Inc.

By 

Craig S. Henig
Sr. Managing Director

February 9, 2018 | 12:03 AM EST
Date

EXHIBIT A – 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 TAMUS. 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 TAMUS at least ten days before the effective date of the cancellation.

Insurance:

Coverage

Limit

A. Worker's Compensation

Statutory Benefits (Coverage A)
Employers Liability (Coverage B)

Statutory
\$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 TAMUS. 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. 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 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 TAMUS:

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 TAMUS 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 TAMUS ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Exhibit A.

Any deductible or self-insured retention must be declared to and approved by TAMUS 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 TAMUS contact in Section 10(T).

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

EXHIBIT B - SCOPE OF WORK

- 1. Market Viability:** CBRE will discuss potential data center development in the Brazos Valley in context of the broader North American Data Center Market.
- 2. Site Evaluation:** CBRE will evaluate the proposed development site from the vantage point of a competitive data center development site selection with a focus on the unique merits and challenges of the proposed site.
- 3. Candidate Evaluation:** Written proposal responses, public data and in person discussions will form the basis of information CBRE will use to evaluate the candidates on the basis of their respective:
 - Financial Outlook
 - Project Pro-Forma
 - Competitive Position within the Texas Data Center Market
- 4. Deliverable:** CBRE will produce a Summary Report of its conclusions and supporting research.
- 5. Project Term:** CBRE shall commence our work on or after the Effective Date. The Summary Report will be available 30 days following the final interviews, but no later than 90 days after the effective date.

COMPENSATION

- 1. Compensation:** CBRE's fee is \$75,000. Travel costs to be reimbursed by TAMUS consistent with Section 3(c) of the Agreement. Payments shall conform with Section 3 of the Agreement.