

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

This Services Agreement (“Agreement”) is entered into and effective upon final execution of this Agreement (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 Financial Risk Mitigation, Inc. (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 will provide background screening services on key investment professionals of firms that are under consideration to provide investment services to the A&M System (Reports). The services included (but not limited to) in the scope of this Agreement are listed in Exhibit A, attached hereto. Exhibit D contains additional terms requested by PROVIDER and are made a part of this Agreement. In the event there is a conflict between the terms and conditions of the Agreement and Exhibit D, the TAMUS terms will control.

**2. TERM OF THE AGREEMENT**

The initial term of this Agreement shall begin upon final execution and will extend for five (5) years. This Agreement can be extended for one (1) additional five (5) year term upon written agreement of both parties. 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 PROVIDER.

**3. PAYMENT TERMS**

- A. The Payment rate schedule is attached as Exhibit B and made a part of this agreement.
- B. PROVIDER shall invoice The A&M System after the completion of each set of Reports ordered by The A&M System. PROVIDER will not charge for any travel expenses. 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 30<sup>th</sup> day unless a discount has been arranged for more immediate payment.
- C. **[Intentionally Blank]**
- D. 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/> .
- E. 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. A&M System shall have the right to terminate the contract with the PROVIDER without penalty after a (30) days written notice of termination to the PROVIDER under the following circumstances:
  - a. Default of PROVIDER – It shall be considered a default whenever the PROVIDER shall:
    - i. Disregard or violate material provisions of the contract documents or A&M System instructions, or fail to execute the work according to the agreed upon schedule of completion and/or time of completion specified, including extensions thereof, or fail to reach agreed upon performance results.
    - ii. Declare bankruptcy or become insolvent.
- B. Convenience of A&M System - Termination of the contract services is construed by A&M System to be in its best interest for serving the community and its students, faculty, and staff.
- C. Any contract cancellation notice shall not relieve the PROVIDER of the obligation to deliver and/or perform prior to the effective date of cancellation.
- D. PROVIDER shall have the right to terminate services with 30 day written notice for just cause and breach, such as: (a) failure to make any payment due to FRM when due as required by the Terms of Service; or (b) breach of representation; or, (c) breach of any obligation required by the Terms of Service, with such termination not to take effect if the breach has been cured within the 30 notice period . PROVIDER shall have the right to terminate services immediately for failure to by A&M Systems to fully comply with any and all Credit Reporting or Privacy Laws

#### 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**

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

8. **MISCELLANEOUS**

- A. Indemnification and Hold Harmless.** The PROVIDER shall defend, indemnify and hold harmless A&M System, its officers, employees and agents, against any and all liability of whatever nature which may arise directly or indirectly by reason of the PROVIDER's performance under the contract. The PROVIDER agrees to protect the State from claims involving infringement of patents or copyrights.
- 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 with the Exhibits listed herein 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; provided, however, Provider may engage third party contractors without the prior written consent of The A&M Systems to perform certain functions, tasks or services ancillary to the performance of the Services. Such functions, tasks or services shall include, but are not limited to, [REDACTED]  
[REDACTED]  
[REDACTED] Provider shall be responsible for the activities of its subcontractors.
- L. HUB Subcontracting Plan. . THIS SECTION APPLIES ONLY IN THE EVENT THE SERVICES ORDERED BY THE A&M SYSTEM OVER THE LIFE OF THIS AGREEMENT MEETS OR EXCEED \$100,000.** 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.

- M.** 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](mailto:zimmermann@tamus.edu) for assistance in determining available HUB subcontractors and proper completion of the HSP **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.
- P. Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against The A&M System shall be in the county in which the primary office of the chief executive officer of The A&M System is located, which is Brazos County, Texas.
- Q. Non-Waiver.** 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, privileges, and immunities as may be provided by law.
- R. 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.
- S. 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.
- T. 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.

- U. Ownership of Documents.** Upon completion or termination of any contract agreement, all documents prepared by the PROVIDER for the benefit of The A&M System shall become the property of The A&M System. At A&M System' option, such documents will be delivered to The A&M System Procurement Office. The A&M System acknowledges that the documents are prepared only for the contracted services specified. Prior to completion of the contracted services, The A&M System shall have a recognized proprietary interest in any work product of the PROVIDER that is ordered by A&M System, prepared by PROVIDER, and for which it pays the fees provided for herein.
- V. Warranties.** In addition to all warranties established by law, PROVIDER hereby warrants and agrees that:
- a. FRM shall use good faith in obtaining information from sources deemed reliable but cannot guarantee the accuracy of the Reports and does not represent or warrant that the Portal or its Content is error free. FRM does not warrant or represent that the information or the Reports available on or through the Portal will be complete, correct, accurate, timely or otherwise reliable or merchantable and fit for the purpose intended.
- W. Signatures.** These Terms of Service may be executed in counterparts whether by wet signature or electronic signature, each of which shall be deemed to have the same force as if an original and taken together shall constitute one and the same instrument.
- X. Binding Effect.** These Terms of Service shall inure to the benefit of and shall be binding on FRM and The A&M System hereto and their respective heirs, legatees, administrators, executors, legal representatives, successors, and permitted assigns.
- Y. Authorization of Signatories.** The A&M System by way of Client Head Designate's ("CHD"), as defined in Exhibit D, registration on the Portal and FRM by way of approving the registration of the CHD represent, and affirm that they have the authority to enter into this Agreement.
- Z. Compliance With Laws.** PROVIDER shall fully comply with its obligations under all applicable federal, state and local laws, regulations, codes, ordinances and orders.
- AA. 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. The 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:

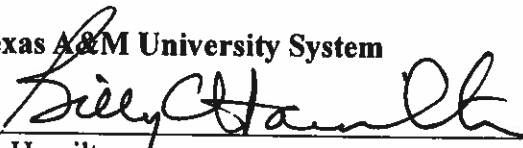
The A&M System:   The Texas A&M University System  
301 Tarrow St., Suite 361  
College Station, Texas 77840  
Attention: Jeff Zimmermann  
Phone: (979) 458-6410  
Fax: (979) 458-6250  
E-mail: [jzimmermann@tamus.edu](mailto:jzimmermann@tamus.edu)

PROVIDER:           Financial Risk Mitigation, Inc.  
2332 North Arnoult Rd.

Metairie, LA 70001  
Phone: (504) 620-0686  
Email: [legal@frm-inc.com](mailto:legal@frm-inc.com)


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  
Deputy Chancellor & Chief Financial Officer

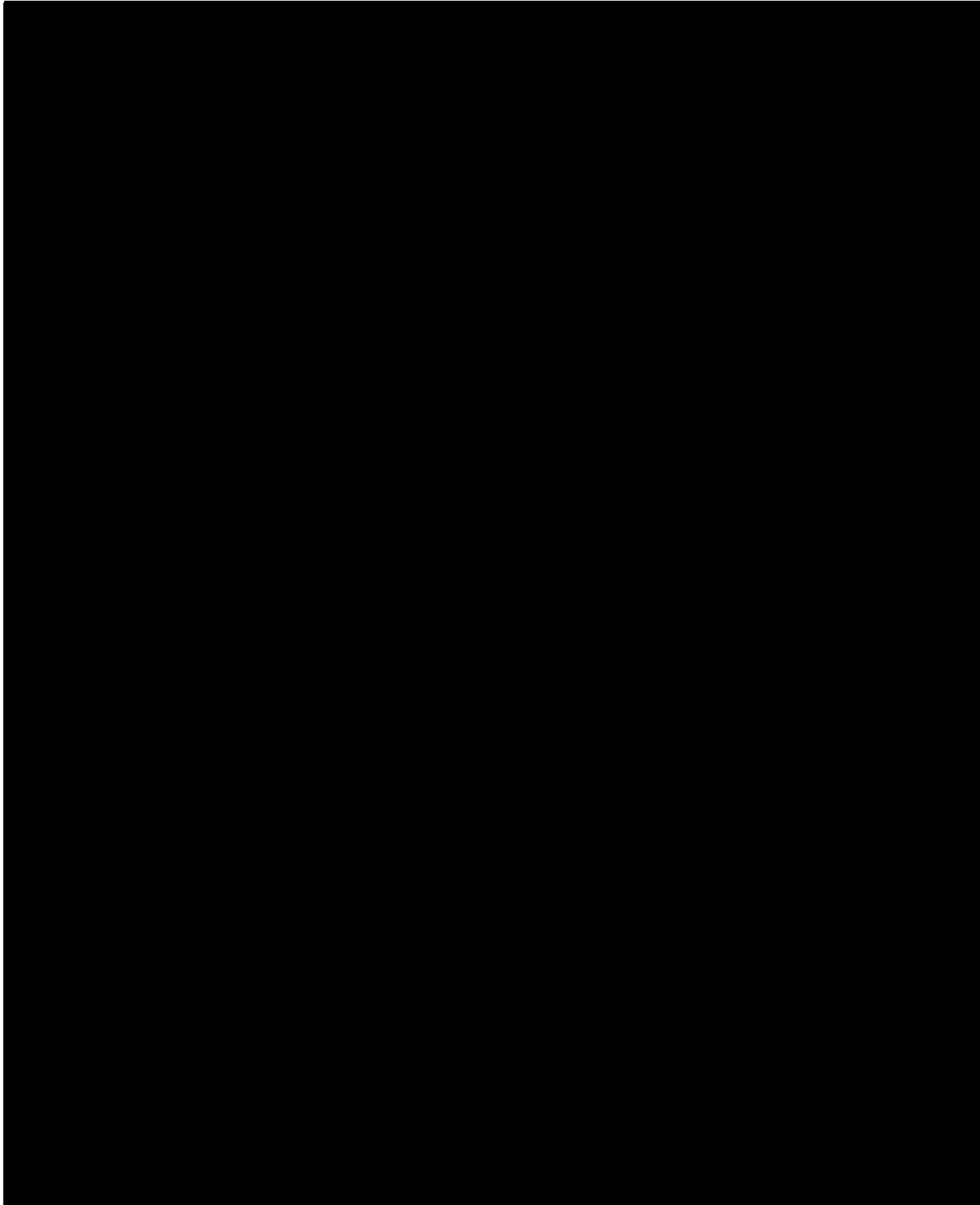
9/6/18  
Date

**Financial Risk Mitigation, Inc.**

By   
Keith W. Kreminski  
Managing Director

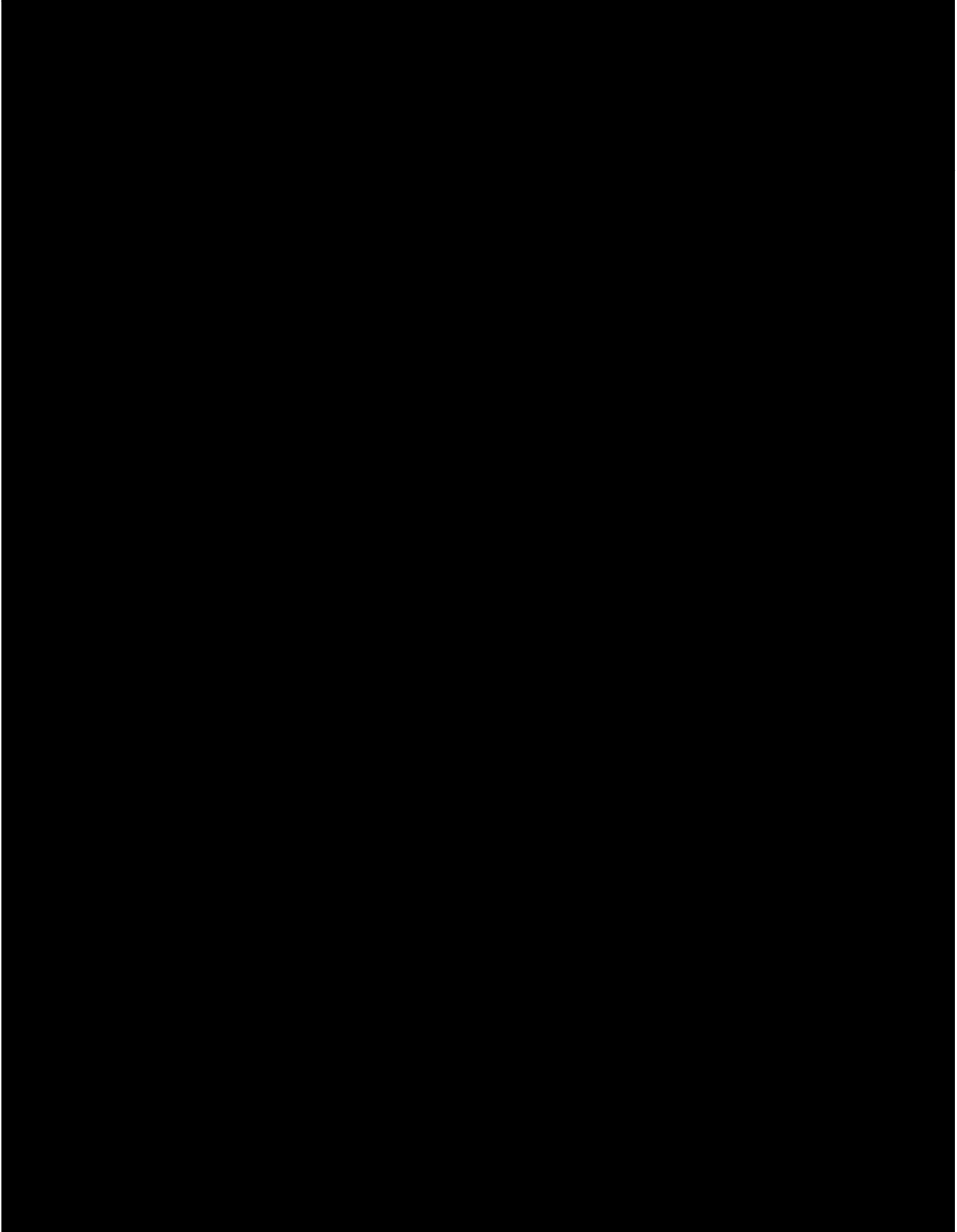
09.26.18  
Date

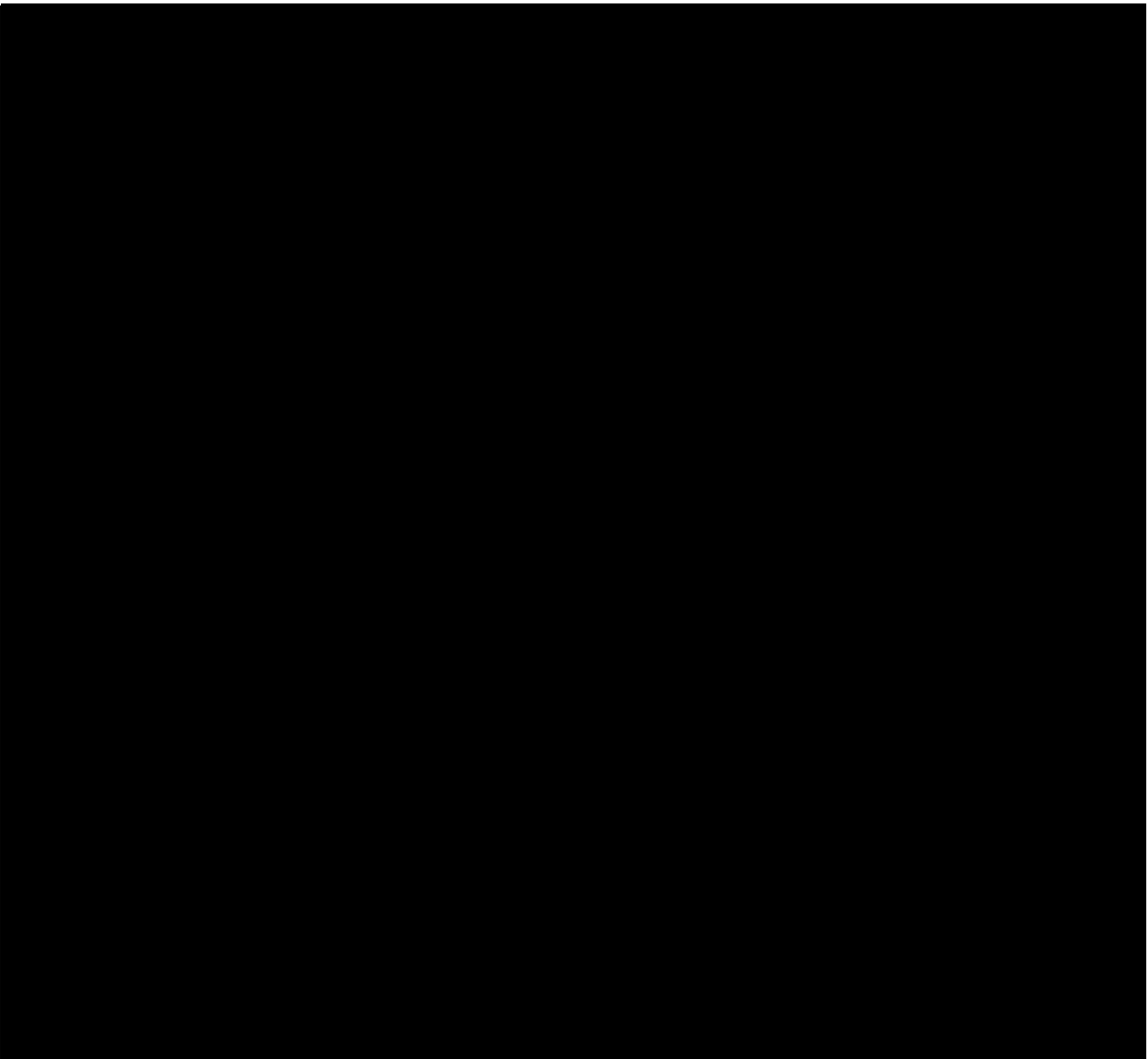
**EXHIBIT A – SCOPE OF WORK**





**EXHIBIT B –PRICING**





## **EXHIBIT C – 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:**

<b><u>Coverage</u></b>	<b><u>Limit</u></b>
<b>A. <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 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.

<b>C. <u>Commercial General Liability</u></b>	
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	\$100,000
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.

## EXHIBIT D – FINANCIAL RISK MITIGATION, INC. TERMS OF SERVICE

The Portal (<https://frmclientportal.com>) (“Portal”) is a service made available by Financial Risk Mitigation, Inc. and its subsidiaries (“FRM”) with a principal place of business located at 2332 North Arnoult Road, Metairie, LA 70001, USA. The Portal is intended for commercial transactions and not personal transactions. By use of the Portal, The A&M System agrees to these terms and conditions (“Terms of Service”).

1. Definitions. In connection with these Terms of Service, the following terms are defined:

- a) Client Head Designate (“CHD”) means the User(s) authorized on behalf of a The A&M System to agree and subscribe to the Terms of Service by virtue of their authority as a member, shareholder, partner, officer, or as an employee authorized in writing by any of the aforementioned. The CHD is also charged with other administrative duties, including but not necessarily limited to, enabling, disabling, and approving Users of the Portal.
- b) Confidential Information means all computer records, customer information, data, programs, reports, interpretations, forecasts, and records containing or otherwise reflecting information and concerning the purpose for which the information was supplied to FRM by The A&M System or by FRM to The A&M System which is not available to the general public whether distilled in paper or electronic form or conveyed orally.  
  
Confidential Information also shall include the fact of the existence of these Terms of Service by and between FRM and The A&M System and the terms of any other agreements by and between FRM and The A&M System.  
  
Confidential Information includes Consumer Reports, Driving Record Reports, Employment Reports, EU/EEA Reports, Merged Reports, NPI , Non FCRA Reports, and any and all requirements set forth for confidentiality in any and all other applicable foreign, federal, state, local laws, rules, regulations, orders, ordinances and requirements related in any way to obtaining, using, or disclosing personal information.
- c) Confirmation Email means an email generated to User(s) of the Portal which contains “Confirmation Email” or “Re-confirmation Email” in the Subject Line of the Portal where subjects of research, fees, and estimated timelines for delivery of Content for the specific services being provisioned.
- d) Consumer Report means any information bearing on a consumer’s credit worthiness, credit standing, credit capacity, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving a factor in establishing the consumer’s eligibility for credit or insurance to be used primarily for personal, family, or household purposes, employment purposes, or any other purpose authorized under the US Fair Credit Reporting Act (15 USC 1681 et seq.)(FCRA) or any other relevant statute in the case of consumers residing outside the jurisdiction of the United States.
- e) Consumer Report User Notice means the “Notice to Users of Consumer Reports: Obligations of Users Under the FCRA which is incorporated by reference herein, expressly made part thereof for any The A&M System accessing Consumer Reports, Employment Reports, or Merged Report and is available for review here.

- f) Content means the images, goods, services, reports, software and all other material provided on or through the Portal or by way of any other delivery mechanism whether oral, paper, or electronic by FRM to The A&M System.
- g) Credit Reporting Laws means the FCRA, and any and all other applicable foreign, federal, state, local laws, rules, regulations, orders, ordinances and requirements related in any way to obtaining, using, or disclosing Consumer Reports, both in the jurisdictions where the The A&M System is located and in the jurisdiction where the consumer as to whom the Consumer Report relates is located.
- h) Data Subject means any information relating to an identified or identifiable person which means one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person based in the European Union or European Economic Area.
- i) Driver Privacy Protection Laws (“DPPL”) means the Driver Privacy Protection Act (18 U.S.C. 2721 et seq.) and any related state laws.
- j) Driving Record Reports means Moving Violation Reports and/or Driving Records (MVRs).
- k) Employee means a prospective or actual employee.
- l) EU/EEA Notice and Consent means a notice complying with all requirements set forth in the General Data Protection Regulation (or other relevant data protection legislation then in force in the European Union or European Economic Area from a Data Subject to a The A&M System where the The A&M System in written, intelligible, and easily accessible form (“clear and plain language”) states the purpose for which the The A&M System is processing the Data Subject’s personal data and where the Data Subject has provided an unambiguous, voluntary, and knowing consent to data processing by way of a clear affirmative action.
- m) EU/EEA Report means a report on a Data Subject whose Personal Data is subject to EU or EEA privacy and data protection laws.
- n) Employment Reports means Content used as a Consumer Report in connection with evaluating an individual for employment, promotion, re-assignment, or retention as an employee
- o) Merged Report means Content used as a Consumer Report prepared by FRM that includes information from consumer reports of more than one of the nationwide consumer reporting agencies, as that term is defined in the FCRA. A Merged Report is a Consumer Report.
- p) Non-FCRA Report means a report requested on an individual domiciled in the United States where the report will not be used for the extension of credit, insurance, or employment and not used primarily for personal, family, or household purposes as defined in 15 USC et seq.
- q) Personal Information shall mean information relating to a Data Subject.
- r) Nonpublic Personal Information (“NPI”) means non public Personal Information (“NPI”) as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 (15 USC 6801

et seq) or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time.

- s) Privacy Shield Notice means the notice published at <https://frm-inc.com/privacy-shield>.
- t) User means a registered User of the Portal.

2. Representations, Agreements, and Conditions. The A&M Systems making use of Consumer Reports, Driving Record Reports, Employment Reports, EU/EEA Reports, Merged Reports, NPI, Non FCRA Reports, and any and all requirements set forth for confidentiality in any and all other applicable foreign, federal, state, local laws, rules, regulations, orders, ordinances and requirements related in any way to obtaining, using, or disclosing personal information make the following representations, warranties, certifications, and agreements:

- a) Portal License. The A&M System is granted a nonexclusive, nontransferable, revocable, limited license to access and use the Portal in accordance with these Terms of Service.
- b) Limitations on Use. Use of the Content is limited to lawful purposes. The A&M System may not reverse engineer, disassemble, rent, lease, loan, sell, sublicense, or create derivative works from the Portal or Content. The A&M System may not use any network monitoring or discovery software to determine the Portal architecture, or extract information about usage or Users. The A&M System may not copy, modify, reproduce, republish, distribute, display, or transmit for commercial, non-profit, or public purposes all or any portion of the Portal or its Content, except to the extent specifically permitted herein.
- c) Intellectual Property Rights. Except as expressly provided in these Terms of Service, nothing contained herein shall be construed as conferring any license or right, by implication, estoppel or otherwise, under copyright or other intellectual property rights. The A&M System acknowledges and agrees that the Portal and its Content are protected by copyrights, trademarks, service marks, patents, or other proprietary rights and laws.
- d) Linking to the Portal. The A&M System may provide links to the Portal, provided The A&M System does not remove or obscure, by framing or otherwise, any portion of the page The A&M System is linking to. The A&M System must discontinue providing links to the Portal if requested by FRM.
- e) Registration. Use of the Portal requires at least one CHD to register for The A&M System. The A&M System acknowledges and agrees to provide FRM with accurate and complete registration information. It is The A&M System's responsibility to inform FRM in writing to [security@frm-inc.com](mailto:security@frm-inc.com) or make use of self-service options on the Portal to directly administer changes to a User's account that might affect the security of the Portal. Each registration of a User is limited to a single individual only. Users shall not share accounts.
- f) Actions by Users. Users are forbidden from obtaining or attempting to obtain Content on themselves, or any other person except as may be in the scope of a User's official duties with The A&M System. The A&M System agrees to take all necessary steps to prevent its Users from obtaining or attempting to obtain Content on other Users of The A&M System, or any other person except as specifically provided herein. The A&M System shall be responsible for any of its Users who violate this policy.
- g) Not Legal Advice. Content made available by FRM is not intended to and does not constitute legal advice and no attorney-client relationship is formed between The A&M

System and FRM. Use of the information in the Portal or materials linked from the Portal is at the The A&M System's own risk. The A&M System should consult an attorney with any legal questions The A&M System may have.

- h) Children's Online Privacy Protection Act. Nothing on the Portal is knowingly directed to children under age 13. FRM does not knowingly collect personally identifiable information from children under the age of 13.
- i) Errors and Corrections. FRM does not represent or warrant that the Portal or its Content is error free, free of viruses or other harmful components, or that defects will be corrected. FRM does not warrant or represent that the information available on or through the Portal will be complete, correct, accurate, timely or otherwise reliable. FRM may make improvements and/or changes to its features, functionality of the Portal or its Content at any time without notice.
- j) Third Party Content. Third party content may appear on the Portal or may be accessible via links from the Portal. FRM is not responsible for and assumes no liability for any mistakes, misstatements of law, defamation, slander, libel, omissions, falsehood, obscenity, pornography or profanity in the statements, opinions, representations or any other form of content from any third party content appearing on the Portal. The A&M System understands that the information and opinions in the third party content is neither endorsed by nor does it necessarily reflect the opinion of FRM.
- k) Confidentiality. The A&M System and its representatives, agents, and fiduciaries may submit Confidential Information to FRM not available to the general public via the Portal and also by other electronic, oral, or paper based means.

FRM and its representatives, agents, and fiduciaries may submit Confidential Information to The A&M System not available to the general public via the Portal and also by other electronic, oral, or paper based means.

In consideration of The A&M System and FRM providing Confidential Information to each other, The A&M System and FRM mutually covenant and agree that each will undertake commercially reasonable steps (including Data Security steps) to protect Confidential Information and will not, except as hereinafter provided, without prior written consent, be disclosed except for the purpose for which it was supplied.

Further, The A&M System and FRM will disclose Confidential Information only to those representatives who need to know in connection with the Purpose for which the information was supplied.

The A&M System and FRM certifies it has the authority to submit Confidential Information to each other.

- l) Exclusions to Confidentiality. Information which was already in FRM's possession prior to The A&M System submitting information is not Confidential Information, unless privacy laws require such information to be treated as Confidential Information.

Information which was already in The A&M System's possession prior to FRM submitting information is not Confidential Information, unless privacy laws require such information to be treated as Confidential Information.

Information which is obtained from a third person who is not prohibited from transmitting the information to The A&M System by a contractual, legal, or fiduciary



obligation to FRM is not Confidential Information, unless privacy laws require such information to be treated as Confidential Information.

Subject to applicable privacy laws, information which is or becomes publicly available through no fault of The A&M System, FRM, or their Representatives is not Confidential Information.

Notwithstanding anything to the contrary contained herein, Confidential Information may be disclosed if compelled to do so by laws, regulations, rules, orders, legal process, or other proceeding.

Notwithstanding anything to the contrary contained herein, Confidential Information may be disclosed to any party performing services for FRM or The A&M System who has a similar Confidentiality Agreement with The A&M System or FRM, a published policy on Confidentiality, or otherwise, is bound by a professional standard of confidentiality as codified by statute, rule, or regulation subject to privacy laws.

Notwithstanding anything to the contrary contained herein, Confidential Information may be disclosed to legal counsel, examiners, auditors, and directors of The A&M System or FRM and examiners, auditors, and investigators having regulatory authority over The A&M System or FRM in connection with routine examinations and audits of The A&M System or FRM.

- m) Notice of Disclosure of Confidential Information. The A&M System and FRM mutually covenant, if The A&M System, FRM, or their Representatives are requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or other process) and pursuant to The A&M System or FRM's good faith opinion that a disclosure of Confidential Information may be necessary, The A&M System and FRM agree to make reasonable efforts to provide the other with prompt notice to the extent possible of any such request or requirements so that The A&M System or FRM may seek an appropriate protective order or waive compliance with the provisions of the Terms of Service. If a protective order or the receipt of waiver hereunder has not been obtained, or if prior notice is not reasonably possible, The A&M System or FRM may disclose that portion of the Confidential Information which FRM reasonably determines and advises The A&M System or The A&M System advises FRM in writing it is compelled to disclose. In any event neither The A&M System nor FRM nor any of their Representatives will oppose action by The A&M System or FRM to obtain appropriate protective order or other reliable assurance that confidential treatment will be accorded to Confidential Information. The A&M System and FRM covenant that it shall notify each other in a reasonable period of any disclosure of Confidential Information in breach of the Terms of Service.
- n) Resale, Redistribution, & Reproduction. The A&M System shall not resell any Content to any third party. Content is intended solely for the The A&M System and not for the benefit of any third parties. Except for The A&M System's exclusive use, any disclosures, copying, reproduction, or distribution is strictly prohibited.
- o) Data Security Terms of Service. Use of Portal and Content is subject to the The A&M System abiding by Data Security Terms of Service which are attached as Exhibit "E.". The A&M System acknowledges receipt of Data Security Terms of Service and represents it has read, understands, and will comply with Data Security Terms of Service. The A&M System acknowledges it has undertaken a review of FRM's data security

safeguards and by virtue of registration specifically acknowledge and agree the policies and procedures used by FRM are commercially reasonable.

- p) Notice of Investigations. The A&M System acknowledges and agrees that it will provide prompt and detailed notice to FRM of any investigation of The A&M System that is undertaken by any federal, state, local, quasi-governmental entity, or regulator in connection with the The A&M System's use or disclosure of Consumer Reports, violation of privacy laws, or compliance with Credit Reporting laws.
- q) Unlawful Activity. FRM reserves the right to investigate complaints or reported violations of the Terms of Service and to take any action it deems appropriate including, but not limited to, reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties and disclosing any information necessary to such persons or entities relating to user profiles, e-mail addresses, usage history, posted materials, IP addresses and traffic information.
- r) Remedies for Violations. FRM reserves the right to seek all remedies at law and in equity for violations of these Terms of Service, including but not limited to the right to block access from a particular internet address to the Portal.
- s) Disclaimer. THE PORTAL AND ITS CONTENT IS PROVIDED ON AN "AS IS" BASIS. FRM AND ITS DATA SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR USE AND NON-INFRINGEMENT, AND DISCLAIM ALL RESPONSIBILITY FOR ANY LOSS, INJURY, CLAIM, LIABILITY, OR DAMAGE OF ANY KIND RESULTING FROM, OUT OF OR IN ANY WAY RELATED TO (A) ERRORS IN OR OMISSIONS FROM THIS PORTAL AND THE CONTENT, INCLUDING BUT NOT LIMITED TO INACCURACIES AND TYPOGRAPHICAL ERRORS, CORRECTNESS, COMPLETENESS, AND CURRENTNESS OF CONTENT , (B) ANY THIRD PARTIES OR CONTENT THEREIN DIRECTLY OR INDIRECTLY ACCESSED THROUGH PORTAL, INCLUDING BUT NOT LIMITED TO ANY ERRORS IN OR OMISSIONS THEREFROM, (C) THE UNAVAILABILITY OF THE PORTAL OR ANY PORTION THEREOF AT ANY TIME, OR (D) SUBSCRIBER'S USE OF THE PORTAL.

NEITHER FRM, NOR ANY OF ITS DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, LICENSORS, AFFILIATED COMPANIES OR PROVIDERS WILL BE LIABLE TO SUBSCRIBER FOR ANY LOSS OR INJURY ARISING OUT OF, OR CAUSED IN WHOLE OR IN PART BY THEM IN PROCURING, COMPILING, COLLECTING, INTERPRETING, PROCESSING, REPORTING OR TRANSMITTING ANY CONTENT, OR INFORMATION SERVICES. The A&M System recognizes that accessing Content with additional or different identification information, or at a different time from a prior request for Content, may result in Content different from that on the date of the original access. The A&M System will indemnify and hold harmless FRM and its affiliated entities from and against any direct and actual loss, cost, liability and expense (including reasonable attorney fees) resulting from The A&M System's breach of any provision of this Terms of Service.

In addition, The A&M System, to the extent permitted by the Constitution and laws of the state of Texas, agrees to hold the FRM, its officers, directors, and employees, and the consumer reporting agencies (including Equifax, TransUnion, and Experian) providing Consumer Reports to FRM, and each of their officers, directors, members, partners,

agents, representatives, employees and independent contractors harmless from any expense or damage, including without limitation attorney's fees, resulting from claims based on (a) the use, publishing, disclosure or dissemination by The A&M System, or its employees, officers, directors, members, partners, affiliates, representatives, independent contractors or agents, of Consumer Reports or contrary to the conditions and certification contained in this Agreement, (b) the failure of The A&M System, or its employees, officers, directors, members, partners, affiliates, representatives, independent contractors or agents, to fully comply with the FCRA and the Credit Reporting Laws, or (c) any other improper or illegal use or disclosure of Consumer Reports."

- t) **Limitation on Liability.** FRM SHALL NOT BE LIABLE FOR ANY INJURY, CLAIM, LIABILITY, OR DAMAGE OF ANY KIND RESULTING FROM YOUR USE OF THE PORTAL. FRM SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING SPECIAL DAMAGES, LOSS OF PROFIT, OR ATTORNEY FEES, IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE USE OR INABILITY TO USE THE PORTAL OR CONTENT. THE A&M SYSTEM AGREES TO THIS CLAUSE ONLY TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS.
3. The A&M System certifies that Content it is requesting from FRM will not be used as a consumer report and further certifies the information will not be used for the extension of credit, insurance, or employment for family household purposes as defined in the Fair Credit Reporting Act (15 USC 1681 et seq.). The A&M System agrees to notify FRM in advance of any such engagement for any of the above purposes.
  4. **Additional Representations Regarding EU/EEA Reports.** The A&M Systems using EU/EEA Reports make the following additional representations, certifications, and agreements:
    - a) **General Certification.** EU/EEA Reports ordered and received by The A&M System hereunder shall, in all cases, be ordered, received and used in strict compliance with the General Data Privacy Regulation and any other relevant data protection legislation then in force in the European Union or European Economic Area.
    - b) **Notice & Consent.** Except as provided for in 4(d) in this Terms of Service The A&M System will order EU/EEA Reports only after (i) EU/EEA Notice and Consent and (ii) providing a copy of the Privacy Shield Notice or hyperlink to the Privacy Shield Notice to each and every Data Subject. The A&M System is responsible for the EU/EEA Notice and Privacy Shield Notice even in such instances where the The A&M System may request FRM to collect information directly from the Data Subject.
    - c) **Retention.** The A&M System shall retain evidence of the EU/EEA Notice and Consent on each Data Subject and promptly submit EU/EEA Notices to FRM upon demand.
    - d) **Exceptions.** FRM may waive the The A&M System's need to obtain an EU/EEA Notice & Consent and Privacy Shield Notice if (i) The A&M System notifies FRM that obtaining the EU/EEA Notice and Consent is not required in advance of ordering an EU/EEA Report, (ii) the The A&M System provides the lawful exception for processing Personal Information of the Data Subject under the General Data Privacy Regulation exempting the The A&M System from needing an EU/EEA Notice and Consent, and lawful exception under any other relevant data protection legislation then in force in the

European Union or European Economic Area, and (iii) FRM consents to processing the Personal Data of the Data Subject.

- e) Refusal to Process. FRM may at its sole discretion decide not to process the Personal Data of any Data Subject.
  - f) Irreparable Harm. The A&M System acknowledges that FRM relies upon these certifications, representations, warranties, and agreements in providing EU/EEA Reports to the The A&M System, and that FRM could suffer substantial and/or irreparable harm if these provisions are breached.
  - g) Possible Legal Implications Related to Misuse. THE GENERAL DATA PRIVACY REGULATION PROVIDES FOR ADMINISTRATIVE FINES UP TO € 20,000,000 or 4 % of ANNUAL GLOBAL TURNOVER, WHICHEVER IS HIGHER.
5. Fees for Content. FRM confirms fees for accessing Content on Portal by way of Confirmation Email. Fees for Services as initially requested on Portal may differ from Fees quoted in Confirmation Email as User may have improperly scoped a request for Content. FRM generally forwards a Confirmation Email the same day or within 1 business day of User requesting paid Content from Portal. If User fails to dispute the Fees for Content as scoped in the Confirmation Email within one (1) business day of Confirmation Email's submission, The A&M System is responsible for total Fees quoted. Subsequent revisions to scope and/or fees are accompanied by re-confirmation emails. The A&M System is responsible for Fees for Content in any re-confirmation email if not disputed within one (1) business day of a Confirmation Email's submission.
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11. Modification to Terms of Service. FRM reserves the right to change these Terms of Service. In such cases, Notice will be provided to The A&M System.
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## **EXHIBIT E DATA SECURITY STEPS**

## Data Security

The A&M Systems shall only access Content from FRM from corporately owned and/or managed devices or software that have industry recognized anti-virus, anti-spyware, and firewalls installed with current subscriptions and signature files. Any A&M System employee downloading or receiving content from FRM shall undertake commercially reasonable efforts to protect any information accessed and/or downloaded by, from, and through the Portal or by way of any other delivery mechanism whether oral, paper, or electronic

Commercially reasonable steps include, but may not be limited to:

(i) maintaining multiple layers of network security;

(ii) using industry-recognized and best-practice configured firewalls, routers, and intrusion detection services;

(iii) securing access (both physical and network) to systems storing FRM Content with authentication, complex password and password changes in accordance with generally accepted and prudent practices;

(iv) patching servers on a timely basis with appropriate security-specific system patches, as they are available;

(v) logging mechanisms for systems and services allowing for tracking and analysis in the event of compromise;

(vi) assuring data security when storing or disposing of FRM Content such as locking up Reports, incinerating paper files, degaussing, and remotely wiping computer equipment;

(vii) using strong encryption of Content during transmission and while in a state of rest; and,

(viii) maintaining an Information Security Program as administered by an employee or employees which is anticipatory of foreseeable threats or hazards for attacks, intrusions, unauthorized access, system failures, alteration, destruction, or breach of confidentiality of FRM Content and Portal by way of: (a) using administrative, technical, and physical safeguards (collectively, "Safeguards") to protect FRM Content and Portal; (b) reasonably designing, periodically reviewing, regularly testing, monitoring, and risk assessing Safeguards (collectively, "Safeguard Reviews"); and, (c) modifying and upgrading systems, system controls, procedures (including training of employees and management) as informed by the results of those Safeguard Reviews.