

AN AGREEMENT  
BY AND BETWEEN  
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES  
AND GOTHAMS, LLC

This Services Agreement (“Agreement”) is entered into and effective 3 July, 2020 (the “Effective Date”), by and between The Texas A&M University System (hereafter referred to as “A&M System”), an agency of the state of Texas, and Gothams, LLC, a Delaware limited liability company (hereafter referred to as “PROVIDER”). A&M System and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively).

WHEREAS, PROVIDER has contracted with Curative, Inc., which owns and has contracted with one or more high-complexity laboratories (“Labs”) certified under the Clinical Laboratory Improvement Amendments of 1988 (“CLIA”) and duly licensed to perform laboratory services for the processing of assays to detect severe acute respiratory syndrome coronavirus 2 (“SARS-CoV-2”), the virus that causes coronavirus disease 2019 (“COVID-19”), authorized by the U.S. Food and Drug Administration (“FDA”) pursuant to an Emergency Use Authorization (“EUA”);

WHEREAS, A&M System is comprised of a statewide network of universities and state agencies (“Members”);

WHEREAS, on March 11, 2020 the World Health Organization announced that the outbreak of COVID-19 can be characterized as a pandemic, on March 13, 2020, the president of the United States declared a national emergency and the governor of the State of Texas declared a state of disaster in Texas, and on March 25, 2020, the president of the United States issued a Major Disaster Declaration for the State of Texas (“COVID-19 Pandemic”);

WHEREAS, in light of the COVID-19 Pandemic, A&M System desires to provide access to COVID-19 testing for students and employees of the A&M System or its Members (“Clients”); and

WHEREAS, the activities contemplated under this Agreement are of mutual interest and benefit to the Parties.

NOW THEREFORE, in consideration of the mutual covenants and premises contained in this Agreement, the receipt and sufficiency of which is acknowledged, A&M System and PROVIDER hereby agree as follows:

**1. SCOPE OF WORK**

Consistent with the provisions of this Agreement, PROVIDER shall, or agrees to cause Curative to, distribute sample collection kits to A&M System and provide certain laboratory and related services in a manner consistent with the EUA as described herein:

- A. Type of Test: The Curative-Korva SARS-Cov-2 Assay (the “COVID-19 Test”) which has been authorized by the FDA under an EUA. The COVID-19 Test is a real-time reverse transcription polymerase chain reaction (rRT-PCR) test for the detection of nucleic acid from SARS-CoV-2 using respiratory or oral fluid specimens collected from individuals suspected of COVID-19 in consultation with a healthcare provider. The EUA for the COVID-19 Test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of in vitro diagnostics for detection and/or diagnosis of

COVID-19 under Section 564(b)(2) of the Federal Food, Drug, and Cosmetic Act (the “Act”) or the EUA is terminated or revoked sooner under Section 564(g) of the Act (“EUA Termination”).

- B. **Kits:** PROVIDER shall cause Curative to distribute sample collection kits (“Kits”) to A&M System or its Members, at the locations specified in writing by A&M System or its Members. The Kits shall consist of: (i) specimen collection materials (oral swab and collection tube containing transport and storage medium) and (ii) specimen biohazard bag. Bulk Kit shipments, in increments of 200, will include (i) pre-paid FedEx Priority Overnight return labels; (ii) information regarding the shelf life of the Kits and storage requirements (1 year if stored out of direct sunlight and kept under 104 degrees Fahrenheit), and (iii) instructions for how to appropriately collect the oral fluid specimen and place it in the transport tube, how to properly package the specimen for return to the Lab, how to ship the specimen back to the Lab via FedEx Priority Overnight, and providing the Lab’s name and address and the Curative customer support contact information. The initial order will be for up to 20,000 Kits per month for 6 months. A&M System or its Member shall submit a written request for Kits (“Kits Request”), specifying the number of Kits, in increments of 200, being requested and the shipment address for delivery, to [REDACTED] and cc: [REDACTED]. PROVIDER shall cause Curative to ship the Kits within 24 hours of Curative’s receipt of the Kits Request for orders received Monday through Thursday. PROVIDER will not charge any shipping fees or other fees incurred with the shipment of the Kits. The Kit(s) shall remain free of material defects in materials and workmanship for a period of one (1) year from the date of their delivery to A&M System or its Member (“Warranty Period”), provided that A&M System or its Member properly handle and store the Kit(s) as described above. During the Warranty Period, A&M System or its Member may reject any such Kit(s) by giving written notice to Curative. In such event, A&M System shall receive replacement Kits at no additional cost within two (2) business days of providing notice to Curative.
- C. **Client Registration:** A&M System acknowledges that each Kit requires registration using Curative’s website prior to A&M System, its Member or Client, or public health authorities receiving any Lab Results (as defined below) in accordance Section 1.F. For the individual Client to receive Lab Results, A&M System and Client shall provide the Client information requested in the Curative patient portal and specify a valid email address for use by Curative to provide the Client’s individual Lab Results.
- D. **Sample Collection:** A&M System or its Member shall assign appropriate personnel who have received Gotham’s recommended training to serve at a collection station or site established by A&M System where such trained worker shall oversee or supervise the collection of samples from Clients in a manner consistent with the terms and conditions of the EUA provided in writing by PROVIDER to the A&M System and per Curative’s written instructions provided to A&M System including properly scanning the sample barcodes and associating the barcoded samples with the proper Client, and/or otherwise in compliance with applicable law. A&M SYSTEM WILL NOT USE, OR PERMIT THE USE OF, THE KITS FOR ANY OTHER PURPOSE. Client samples must be received by Curative within three (3) days of collection.
- E. **Return of Kits:** Within two (2) business days of delivery of each Kit to the Lab, PROVIDER will notify A&M System or its Member of any missing samples or samples that are received in a damaged and/or contaminated condition or any other discrepancy. PROVIDER will provide A&M System or its Member with additional instructions regarding such missing,

damaged and/or contaminated samples and will work with A&M System or its Member to promptly remedy the situation.

- F. Results: The Lab will promptly process the Kits upon receipt of the samples collected. PROVIDER shall cause Curative to provide A&M System or its Member with access to a copy of the Curative individually identifiable laboratory results, for the COVID-19 Test ("Lab Results") within [REDACTED] from the time the specimen is delivered at the Curative Lab, provided that A&M System deliver no more than [REDACTED]. Additionally, Lab Results will be provided directly to the respective Client at the Client email address provided. At a minimum, The Lab Results will include, patient's name, date of test, test name, test result, normal values, laboratory name and address. PROVIDER shall cause Curative to correct any error in the Lab Results within 24 hours of discovering such error or receiving notice from A&M System or its Members of such error. PROVIDER shall cause Curative to report Lab Results to local and state public health authorities as required by law.
- G. Website: PROVIDER shall cause Curative to design and make available a website ("Website") to A&M System, its Members and Clients for the purpose of registering for an appointment for testing and to receive Lab Results, with customizations as may be specified by A&M System or its Member and agreed to by Curative. Use of such Website by A&M System, its Member and Clients shall be subject to the Website Terms and Conditions and Privacy Policy. A&M System and its Members shall have an opportunity to inspect and reasonably test the Website prior to acceptance. A&M System and its Members may request minor updates to the Website, such as a change in the test site location or date. Major changes, such as the addition of new features to an existing Website, shall be negotiated between the Parties in good faith. Curative shall retain all intellectual property rights in the Website design and derivatives/improvements.
- H. Training: Upon request, PROVIDER shall promptly provide training to (i) A&M System or its Member personnel who are collecting samples from Clients on how to appropriately collect the nasal swab or oral fluid specimen and how to handle, package and ship the specimen back to the Lab, and (ii) A&M System or its Members on use of any software or website necessary to accomplish the testing services detailed in this agreement.

## 2. TERM OF THE AGREEMENT

The initial term of this Agreement shall begin upon execution by both parties and remain effective through completion of the scope of work as described in Section 1, unless sooner terminated pursuant to the terms hereof. Any amendments or extensions to this Agreement shall be at the same terms and conditions plus any approved changes to be determined by A&M System and negotiated in writing with the PROVIDER.

## 3. PAYMENT TERMS

- A. For the services rendered under this Agreement, A&M System shall pay PROVIDER [REDACTED] per Kit. This amount shall be inclusive of all necessary expenses for the provision of all services under this Agreement, including but not limited to, sampling supplies, all necessary training for sampling, software platform, test procedures, lab work and response and assistance with logistics associated with distribution and management of sampling, testing and results response.
- B. Inclusive in this price is (i) the cost of standard overnight shipment to deliver the Kits, in increments of 200, to A&M System or its Member, and (ii) a [REDACTED] per Kit allowance



(“Shipment Allowance”) to cover the shipment cost to deliver the Kits to the Lab (“Return Shipment”) via FedEx Priority Overnight. If the Return Shipment cost exceeds the Allowance, PROVIDER will invoice the A&M System the excess cost with appropriate supporting documentation.

- C. The prices, terms, and conditions under this Agreement must be equal to or better than those ordered by any other state or local governmental entity customer of PROVIDER where A&M System orders at least the same number of Kits as such customers within a similar time frame. To the extent PROVIDER is not in compliance with this Section 3B, PROVIDER must refund to A&M System the difference between the pricing under this Agreement and the lower, competitive price in violation of this Section 3B. Within thirty (30) days of A&M System’s determination that PROVIDER is not in compliance, PROVIDER agrees that it will (i) provide A&M System with the more favorable prices, terms, and conditions, (ii) amend this Agreement to reflect the change in pricing and (iii) and issue any required refund.
- D. PROVIDER shall invoice A&M System for the Kits actually delivered by PROVIDER. Payment will be made to PROVIDER upon approval of such invoice by A&M System. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within fifteen (15) 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 15<sup>th</sup> day unless a discount has been arranged for more immediate payment.
- E. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to 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/>
- F. All invoices must reference any resultant and applicable A&M System or Member purchase order number and include detail regarding the number of Kits provided for that specific purchase order.

#### 4. **DEFAULT AND TERMINATION**

- A. In the event of a substantial failure by either Party to perform in accordance with the terms hereof, the non-defaulting party may terminate this Agreement upon thirty (30) days written notice 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 thirty-day period), provided that said failure is through no fault of the non-defaulting party.
- B. Either Party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other Party.
- C. PROVIDER shall promptly submit written notice to A&M System of an EUA Termination. In the event of an EUA Termination, either Party may terminate this Agreement without liability or penalty and PROVIDER agrees to reimburse the A&M System for any amounts paid for unused COVID-19 Tests that the A&M System will no longer be able to use without FDA authorization.
- D. A&M System has the right to immediately terminate this Agreement, without penalty, in the event of (i) PROVIDER’s gross negligence, willful misconduct, or sanction by the Centers for Medicare and Medicaid Services (“CMS”), the Office of the Inspector General or another governmental entity, (ii) PROVIDER’s violation of any Applicable Law (as defined below),

or (iii) a filing by or against PROVIDER of a petition in bankruptcy or in equity for receivership or for reorganization under the United States Bankruptcy Code, as now or hereafter amended, which filing is not withdrawn or vacated within thirty (30) days.

- E. Upon the expiration or termination of this Agreement for any reason, (i) A&M System shall pay PROVIDER any fees for Kits and services rendered through the effective date of the termination, (ii) PROVIDER shall deliver to A&M System all data and materials, including but not limited to Lab Results, relating to any services rendered by PROVIDER through the effective date of the expiration or termination, and (iii) PROVIDER shall cause Curative to process and communicate Lab Results for any and all return shipments of Kits received on or prior to the effective date of the expiration or termination.

## 5. **CONFIDENTIALITY**

Each Party recognizes and acknowledges that, by virtue of entering into this Agreement and performing their respective obligations hereunder, each Party may have access to certain information of the other Party that is confidential and constitutes proprietary, valuable, special and unique property of the other Party. To the extent allowed by the laws and Constitution of the State of Texas without regard to its conflicts of law statutes or principles, the Parties agree that they shall not at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without the express prior written consent of the other Party whose confidential information is so disclosed or used, except pursuant to the performance of such Party's duties hereunder, any confidential or proprietary information of the other Party, including, but not limited to, information which concerns patients and costs which is not otherwise available to the public. Any information owned by either Party shall remain the property of the disclosing party.

## 6. **PUBLIC INFORMATION**

- A. PROVIDER acknowledges that 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 A&M System's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System.
- C. PROVIDER acknowledges that 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.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this agreement and the PROVIDER agrees that the agreement can be terminated if the PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

## 7. **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 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, Deputy

Chancellor and Chief Financial Officer for A&M System, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

**8. INSURANCE**

Insurance requirements are stated in Exhibit A, attached hereto.

**9. HIPAA COMPLIANCE**

- A. Each party hereto will comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Agreement, including but not limited to the Healthcare Laws (as defined below) (collectively, "Applicable Law").
- B. Under this Agreement, PROVIDER may create, or have access to, records or record systems that contain data protected or made confidential or sensitive by applicable federal, state, and local laws, rules, and regulations (collectively, "Patient Records"). PROVIDER will comply with all applicable federal, state, and local laws, rules, and regulations relating to the maintenance, uses, and disclosures of such Patient Records ("Healthcare Laws"), including but not limited to, the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder and Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder. PROVIDER agrees to enter into any necessary Business Associate Agreements with appropriate entities for the provision of the services or sharing of Patient Records under this Agreement. At the request of A&M System or its Member, PROVIDER may provide A&M System or its Member with de-identified components of Patient Records, provided that such sharing is conducted in accordance with all applicable Healthcare Laws.
- C. Regardless of whether Curative would otherwise be subject to the Healthcare Laws, in performing the services, PROVIDER will cause Curative to comply with all Applicable Laws including the Healthcare Laws. As such, in the event of an access to a Client's information, or use or disclosure of a Client's information by a Lab, that is or would be impermissible under any Applicable Law related to the privacy and security of Client information, Curative shall be responsible for responding to the incident as required or as would be required by any Applicable Law related to the privacy and security of Client information and for providing all notifications that are or would be required under any Applicable Law. In addition to the foregoing, in the event of an impermissible access, use, or disclosure of a Client's information, PROVIDER shall cause Curative to provide the A&M System with notice of the incident within five (5) days of discovery, and Curative shall cooperate with A&M System to provide A&M System with all requested information related to the incident, to the extent reasonably known. Curative may only use or disclose information relating to a Client or any derivative thereof ("Client Data") for providing the services hereunder, for the proper management and administration of the Lab(s), to perform data aggregation services for A&M System, to de-identify Client Data pursuant to Healthcare Laws, or as required by law, and shall not otherwise use or disclose the Client Data to any third party, including its parent or affiliates, unless and only to the extent necessary to provide the services or to the extent the Client Data is de-identified or aggregated pursuant to Healthcare Laws. PROVIDER will cause Curative to maintain security policies, protocols and procedures that are consistent with industry standards for similar businesses.

**10. REGULATORY COMPLIANCE**

- A. PROVIDER represents and warrants that the Labs are and shall remain duly licensed clinical laboratories under applicable federal, state, and municipal law. Failure to maintain accreditation may result in immediate termination of this Agreement. PROVIDER shall obtain and maintain all licenses, permits, and certifications required by applicable state and federal government authorities for the provision of the services hereunder, including without limitation, the Clinical Laboratory Improvement Act of 1998 (“CLIA”). Upon request, PROVIDER shall provide A&M System with proof that PROVIDER is approved by CMS to provide laboratory services and is licensed or registered, as applicable, in its state(s) of operation. PROVIDER will perform all tests in compliance with any applicable and required standard, ruling, or regulation of The Joint Commission, the U.S. Department of Health and Human Services, CLIA, or any other governmental agency responsible for administering, regulating, or accrediting clinical laboratories and related laboratory personnel. For clarity, neither PROVIDER nor Curative is responsible for any state licensing and/or registration requirements pertaining to the collection station or site established by A&M System or its Member or that of any healthcare professional contracted by A&M System or its Member for collecting samples at such collection station or site, which are the sole responsibilities of A&M System or its Member.
- B. PROVIDER will cause Curative to maintain records as required by Applicable Laws.

#### 11. **REPRESENTATIONS AND WARRANTIES/LIMITATION OF LIABILITY**

PROVIDER represents and warrants that all Kits supplied hereunder shall be (a) manufactured in accordance with Applicable Law and (b) free from defects under normal use and that all work under this agreement will comply with all applicable federal, state and local laws and regulations.

PROVIDER SHALL NOT BE LIABLE TO A&M SYSTEM FOR AMOUNTS IN EXCESS OF THE GREATER OF (A) THE AMOUNTS ACTUALLY PAID TO A&M SYSTEM HEREUNDER IN THE IMMEDIATELY PRECEDING TWELVE MONTHS OR (B) ONE MILLION DOLLARS (\$1,000,000), OR TO THE EXTENT AUTHORIZED UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF TEXAS, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, WHETHER LIABILITY IS ASSERTED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

#### 12. **INDEMNIFICATION**

PROVIDER shall indemnify A&M System, its Members, regents, employees, students and agents (collectively, the “A&M System Indemnitees”) for third party claims arising from (i) PROVIDER’s breach of this Agreement, (ii) the performance of the services under this Agreement, (iii) actual billing errors, false claims, or insurance fraud relating to claims made by PROVIDER for any services, or (iv) the negligent or intentional acts or omissions of PROVIDER or its employees or agents, resulting in physical damage, loss of life, or severe bodily harm, except to the extent such claim arises from an A&M System Indemnitees gross negligence or intentional misconduct.

#### 13. **MISCELLANEOUS**

- A. **Independent Contractor.** The Parties hereto are independent contractors, and neither Party nor any employee of such Party shall be deemed to be an agent or employee of the other Party. Both Parties agree that neither shall have power or right to bind or obligate the other,

nor shall either hold itself out as having such authority. Neither Party will have any 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 A&M System relative to conduct on its premises.

- B. **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.”
- C. **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.
- D. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits 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.
- E. **Not Eligible for Rehire.** PROVIDER is responsible to ensure that employees participating in work for any Member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of this Agreement.
- 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 in connection with the funds. 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 A&M System. PROVIDER shall prohibit Curative from utilizing any other laboratories in performing the services hereunder.
- 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.
- M. In the event that you determine you will be using a subcontractor, please contact Keith Williams from the A&M System's HUB Program at (979) 458-3265 or [kwilliams@tamus.edu](mailto:kwilliams@tamus.edu) for assistance in determining available HUB subcontractors and proper completion of the HSP.
- N. **Force Majeure.** Neither party will be in breach of its obligations under this Agreement (other than payment obligations for services received up to Force Majeure event) or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure (as defined below), except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure had not occurred. "Force Majeure" is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome. Such excuse from

performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform the obligation(s). Written notice of a party's failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). Notwithstanding the foregoing, a party's financial inability to perform its obligations shall in no event constitute a Force Majeure. For the avoidance of doubt, COVID-19 and any governmental changes or closures related thereto shall be deemed Force Majeure events under this Section, even to the extent reasonably foreseeable by either party as of the Effective Date.

- O. **Loss of Funding.** Performance by 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, A&M System will issue written notice to PROVIDER and A&M System may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of A&M System.
- P. **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.
- Q. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against A&M System shall be in the county in which the primary office of the chief executive officer of A&M System is located, which is Brazos County, Texas.
- R. **Non-Waiver.** PROVIDER expressly acknowledges that 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 A&M System of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- S. **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.
- T. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Texas Government Code, Chapter 2271 applies to this Agreement, PROVIDER certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- U. **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 Purchase Order may be terminated if this certification is or becomes inaccurate.

- V. **Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- W. **Records Retention.** PROVIDER will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.
- X. **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. A&M System and PROVIDER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

A&M System:           The Texas A&M University System  
                                   301 Tarrow St., Suite 273  
                                   College Station, Texas 77840  
                                   Attention: Jeff Zimmermann  
                                   Phone: (979) 458-6410  
                                   Fax: (979) 458-6250  
                                   E-mail: [jjzimmermann@tamus.edu](mailto:jjzimmermann@tamus.edu)

PROVIDER:           Gothams, LLC



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**

DocuSigned by:

By

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Billy Hamilton

Deputy Chancellor & Chief Financial Officer

7/3/2020 | 14:44:21 CDT

Date

**Gothams, LLC**

DocuSigned by:

By

1A5DBE7FCA6C4BC...

Jon Gruen

Chief Financial Officer

7/3/2020 | 11:44:05 PDT

Date

## **EXHIBIT A – INSURANCE**

PROVIDER or Labs, as appropriate, shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, the A&M System 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 A&M System at least ten days before the effective date of the cancellation.

### **Coverage**

### **Limit**

#### **A. Worker's Compensation**

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

#### **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;

#### **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

#### **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. <u><b>Umbrella Liability Insurance</b></u>	<b>\$5,000,000 Limit</b>
F. <u><b>Cyber Liability Coverage</b></u>	<b>\$1,000,000 Limit</b>

G. PROVIDER will deliver to A&M System:

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.

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

Any deductible or self-insured retention must be declared to and approved by 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 emailed to the following A&M System contact in SOPurchasement@tamus.edu.

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

**AMENDMENT No. 1  
TO THE AGREEMENT  
BY AND BETWEEN  
THE TEXAS A&M UNIVERSITY SYSTEM  
AND GOTHAMS, LLC**

This Amendment No. 1 (“Amendment”) serves to amend the Services Agreement (“Agreement”), effective July 3, 2020, between The Texas A&M University System (“A&M System”) and Gothams, LLC (“PROVIDER”), and is effective July 9, 2020 (“Amendment Effective Date”). A&M System and PROVIDER agree to amend the agreement as follows:

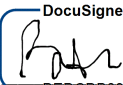
**13. MISCELLANEOUS**

**FERPA.** For purposes of the Family Educational Rights and Privacy Act (“FERPA”), A&M System and its university Members designate the PROVIDER as a school official with a legitimate educational interest in any educational records (as defined in FERPA) to the extent the PROVIDER requires access to those records to fulfill its obligations under this Service Agreement. The PROVIDER shall comply with FERPA as to any such educational records. PROVIDER is prohibited from redisclosure of the educational records except as otherwise authorized by FERPA. Further, PROVIDER and PROVIDER’S officers, employees are only permitted to use the educational records for the purpose of meeting PROVIDER’S obligations under the Service Agreement.

**Except as expressly set forth in and as contemplated in this Amendment, all other terms and conditions in the Agreement are to remain in full force and effect. This Amendment is effective as of the Amendment Effective Date regardless of the date when signed by all parties.**

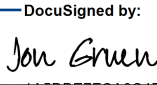
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**The Texas A&M University System:**

DocuSigned by:  
By:   
BILLY HAMILTON  
Deputy Chancellor & Chief Financial Officer

Date: 7/10/2020 | 14:35:30 CDT

**Gothams, LLC:**

DocuSigned by:  
By:   
JON GRUEN  
Chief Financial Officer

Date: 7/10/2020 | 10:31:34 PDT