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Solicitation Notice

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Status: Posted

Solicitation ID:720-1918

Solicitation Title:RFP720-1918 Secure Testing & Proctoring Services

[Modify Solicitation](#)

Organization Name: University Of Texas System - 720

Posting Requirements: 21+ Days for Solicitation Notice

Solicitation Posting Date: 2/19/2019

[Internal Notes](#)

Response Due Date:3/12/2019

Response Due Time: 2:30 PM

[Cancel Solicitation](#)

Solicitation Description: Secure Testing & Proctoring Services

Class/Item Code: 20885-*Surveying Systems Software
20880-*Software, Microcomputer (Not Otherwise Classified)
20866-*Professional: Computer Training, Hospital/Pharmacy, Legal, Etc.
20843-*Educational: Foreign Languages, Math, Science, Social Studies, Etc.
20831-Course Evaluation Software

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Record Attachments

#	Name	Description
1	ESBD_File_154081_RFP 720-1918 Secure Testing & Proctoring Services.docx	RFP Document
2	ESBD_File_154081_RFP 720-1918 APPENDIX TWO - Terms and Conditions.docx	Appendix Two - Sample Terms and Conditions
3	ESBD_File_154081_RFP 720-1918 APPENDIX FOUR - UTS HECVAT VendorAssessToolLite.xlsx	Appendix Four - HECVAT



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REQUEST FOR PROPOSAL

RFP No720-1918 Secure Testing and Proctoring Services.

Proposal Submittal Deadline: Tuesday, March 12th, 2019 at 2:30 PM CST

The University of Texas System
Office of Academic Affairs

Prepared By:
Darya Vienne
The University of Texas System
210 West 7th Street
Austin, Texas 78701-2982
dvienne@utsystem.edu
February 19th, 2019

REQUEST FOR PROPOSAL

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- APPENDIX ONE: PROPOSAL REQUIREMENTS
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- APPENDIX THREE: ACCESS BY INDIVIDUALS WITH DISABILITIES
- APPENDIX FOUR: HIGHER EDUCATION VENDOR ASSESSMENT TOOL (HECVAT)
- APPENDIX FIVE: CERTIFICATE OF INTERESTED PARTIES (Texas Ethics Commission Form 1295)

SECTION 1

INTRODUCTION

1.1 Description of The University of Texas System

For more than 130 years, The University of Texas System has been committed to improving the lives of Texans and people all over the world through education, research and health care.

The University of Texas System is one of the nation's largest systems of higher education, with [14 institutions](#) that educate more than 230,000 students. Each year, UT institutions award more than one-third of all undergraduate degrees in Texas and almost two-thirds of all health professional degrees. With about 20,000 faculty – including Nobel laureates – and more than 80,000 health care professionals, researchers, student advisors and support staff, the UT System is one of the largest employers in the state.

Life-changing research and invention of new technologies at UT institutions places the UT System among the [top 10 “World’s Most Innovative Universities,”](#) according to Reuters. The UT System [ranks eighth in the nation in patent applications](#), and because of the high caliber of scientific research conducted at UT institutions, the UT System is ranked No. 1 in Texas and No. 3 in the nation in federal research expenditures.

In addition, the UT System is home to three of the nation's National Cancer Institute Cancer Centers – UT MD Anderson, UT Southwestern and UT Health Science Center-San Antonio – which must meet rigorous criteria for world-class programs in cancer research. And the UT System is the only System in the country to have four Clinical and Translational Science Awards (CTSA) from the National Institutes of Health.

Transformational initiatives implemented over the past several years have cemented UT as a national leader in higher education, including the expansion of educational opportunities in South Texas with the opening of The University of Texas Rio Grande Valley in 2015. And UT was the only system of higher education in the nation that established not one, but two new medical schools in 2016 at The University of Texas at Austin and UT Rio Grande Valley.

University of Texas institutions are setting the standard for excellence in higher education and will continue to do so thanks to our generous donors and the leadership of the [Chancellor](#), [Board of Regents](#) and [UT presidents](#).

1.2 Background and Special Circumstances

The purpose of this RFP is to select a proctoring solution (“**Solution**”) which supports academic integrity, offers heightened identity verification, and provides access 24/7/365 to students enrolled in both distance and blended online learning contexts. Proctoring is required to ensure academic integrity at post-secondary education institutions. In traditional brick-and-mortar institutions, this can be accomplished on campus through an instructor or at a testing center. These proctors verify the identity of the student and ensure that they do not receive assistance from disallowed materials. This presents a problem for online-supported education, where students are not only located across the

world but are also on varying time schedules. To retain the flexibility that is inherent in online education, a remote proctor can be used to monitor the students during their exams at a location that is convenient to them. The Solution must be capable of monitoring various forms of online assessments / examinations, including multiple choice, short answer, open note and group exams as required by the instructor. The Solution should support the needs of individuals with disabilities who may or may not be using assistive technology. The Solution must also demonstrate active privacy controls during the gathering and storing of confidential information to be gathered from a user or provided by the institution to help with identity verification. Ideally, options for using the verification process independent of test taking could be beneficial for other academic integrity assurance needs.

1.3 Objective of Request for Proposal

The University of Texas System is soliciting proposals in response to this Request for Proposal No.720-1918 (this “**RFP**”), from qualified vendors to provide secure testing and proctoring services (the “**Services**”) using webcams and live persons, each of whom is qualified to monitor exams. The Services are more specifically described in **Section 5** of this RFP.

1.4 Group Purchase Authority

Texas law authorizes institutions of higher education (defined by [§61.003, Education Code](#)) to use the group purchasing procurement method (ref. §§[51.9335](#), [73.115](#), and [74.008](#), *Education Code*). Additional Texas institutions of higher education may therefore elect to enter into a contract with the successful Proposer under this RFP. In particular, Proposer should note that University is part of The University of Texas System (**UT System**), which is comprised of fourteen institutions described at <http://www.utsystem.edu/institutions>. UT System institutions routinely evaluate whether a contract resulting from a procurement conducted by one of the institutions might be suitable for use by another, and if so, this RFP could give rise to additional purchase volumes. As a result, in submitting its proposal, Proposer should consider proposing a pricing model and other commercial terms that take into account the higher volumes and other expanded opportunities that could result from the eventual inclusion of other institutions in the purchase contemplated by this RFP. Any purchases made by other institutions based on this RFP will be the sole responsibility of those institutions.

SECTION 2

NOTICE TO PROPOSER

2.1 Submittal Deadline

University will accept proposals submitted in response to this RFP until 2:30 p.m., Central Standard Time (“**CST**”) on Tuesday, March 12th, 2019 (the “**Submittal Deadline**”).

2.2 University Contact Person

Proposers will direct all questions or concerns regarding this RFP to the following University contact (“**University Contact**”):

Darya Vienne
Email: dvienne@utsystem.edu

University specifically instructs all interested parties to restrict all contact and questions regarding this RFP to written communications delivered to (i) University Contact, or (ii) if questions relate to Historically Underutilized Businesses, to HUB Coordinator (ref. **Section 2.5** of this RFP). *University Contact must receive all questions or concerns no later than 2:30 p.m. on Thursday, February 28th, 2019.* University will have a reasonable amount of time to respond to questions or concerns. It is University’s intent to respond to all appropriate questions and concerns; however, University reserves the right to decline to respond to any question or concern.

2.3 Criteria for Selection

The successful Proposer, if any, selected by University through this RFP will be the Proposer that submits a proposal on or before the Submittal Deadline that is the most advantageous to University. The successful Proposer is referred to as “**Contractor**.”

Proposer is encouraged to propose terms and conditions offering the maximum benefit to University in terms of (1) service, (2) total overall cost, and (3) project management expertise.

The evaluation of proposals and the selection of Contractor will be based on the information provided in the proposal. University may consider additional information if University determines the information is relevant.

Criteria to be considered by University in evaluating proposals and selecting Contractor, will be these factors:

2.3.1 Threshold Criteria Not Scored

- A. Ability of University to comply with laws regarding Historically Underutilized Businesses; and
- B. Ability of University to comply with laws regarding purchases from persons with disabilities.

2.3.2 Scored Criteria

- A. Cost (30%);
- B. Vendor Experience (10%);
- C. Platform Technology, Security and Functionality (20%);
- D. Monitoring Assessments (20%);
- E. Privacy and FERPA Compliance (10%);

F. Integration, Licensing and Support (10%).

2.4 Key Events Schedule

Issuance of RFP	Tuesday, February 19 th , 2019
Deadline for Questions / Concerns (ref. Section 2.2 of this RFP)	2:30 p.m. on Thursday, February 28 th , 2019
Submittal Deadline (ref. Section 2.1 of this RFP)	2:30 p.m. CST on Tuesday, March 12 th , 2019

2.5 Historically Underutilized Businesses

- 2.5.1 All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (each a “**HUB**”) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this RFP, Contractor subcontracts any of the Services, then Contractor must make a good faith effort to utilize HUBs certified by the Procurement and Support Services Division of the Texas Comptroller of Public Accounts. Proposals that fail to comply with the requirements contained in this **Section 2.5** will constitute a material failure to comply with advertised specifications and will be rejected by University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this RFP. Proposer acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the Services will continue throughout the term of all agreements and contractual arrangements resulting from this RFP. Furthermore, any subcontracting of the Services by Proposer is subject to review by University to ensure compliance with the HUB program.
- 2.5.2 University has reviewed this RFP in accordance with [34 Texas Administrative Code \(TAC\) §20.285](#), and has determined that subcontracting opportunities are not probable under this RFP.

SECTION 3

SUBMISSION OF PROPOSAL

3.1 Number of Copies

- A. One (1) complete paper copy of its *entire* proposal.

The paper copy of the proposal should contain the mark “original” on the front cover of the proposal. An original signature by an authorized officer of Proposer must appear on the Execution of Offer (ref. Section 2 of APPENDIX ONE) of the submitted paper copy of the proposal.

- B. One (1) complete electronic copy of its entire proposal in a single .pdf file on USB Flash Drive. USB Flash Drive must include a protective cover and be labeled with Proposer’s name and RFP number. In addition, Proposer must submit one (1) complete electronic copy of the proposal on the same USB Flash Drive on which all proposed pricing information, provided in response to **Section 6**, has been removed.

3.2 Submission

Proposals must be received by University on or before the Submittal Deadline (ref. **Section 2.1** of this RFP) and should be delivered to:

The University of Texas System Administration
210 West 7th Street
Austin, Texas 78701-2982
Attn: Darya Vienne

NOTE: Show the Request for Proposal number and submittal date in the lower left-hand corner of sealed bid envelope (box / container).

Proposals must be typed on letter-size (8-1/2” x 11”) paper, and must be submitted in a 3-ring binder. Preprinted material should be referenced in the proposal and included as labeled attachments. Sections within a proposal should be divided by tabs for ease of reference.

3.3 Proposal Validity Period

Each proposal must state that it will remain valid for University’s acceptance for a minimum of one hundred and twenty (120) days after the Submittal Deadline, to allow time for evaluation, selection, and any unforeseen delays.

3.4 Terms and Conditions

- 3.4.1 Proposer must comply with the requirements and specifications contained in this RFP, including the Terms and Conditions (ref. **APPENDIX TWO**), the Notice to Proposer (ref. **Section 2** of this RFP), Proposal Requirements (ref. **APPENDIX ONE**) and the Specifications and Additional Questions (ref. **Section 5** of this RFP). If there is a conflict among the provisions in this RFP, the provision requiring Proposer to supply the better quality or greater quantity of services will prevail, or if such conflict does not involve quality or quantity, then interpretation will be in the following order of precedence:

- 3.4.1.1. Specifications and Additional Questions (ref. **Section 5** of this RFP);
- 3.4.1.2. Terms and Conditions (ref. **Section 4** and **APPENDIX TWO**);
- 3.4.1.3. Proposal Requirements (ref. **APPENDIX ONE**);
- 3.4.1.4. Notice to Proposers (ref. **Section 2** of this RFP).

3.5 Submittal Checklist

Proposer is instructed to complete, sign, and return the following documents as a part of its proposal. If Proposer fails to return each of the following items with its proposal, then University may reject the proposal:

- 3.5.1 Signed and Completed Execution of Offer (ref. **Section 2** of **APPENDIX ONE**)
- 3.5.2 Signed and Completed Pricing and Delivery Schedule (ref. **Section 6** of this RFP)
- 3.5.3 Responses to Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**)
- 3.5.4 Signed and Completed Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**)
- 3.5.5 Responses to questions and requests for information in the Specifications and Additional Questions Section (ref. **Section 5** of this RFP)
- 3.5.6 Completed Voluntary Product Accessibility Template (VPAT) (ref. **Section 5.2.2** of this RFP).
- 3.5.7 Completed Higher Education Vendor Assessment Tool (HECVAT) (ref. **APPENDIX FOUR** of this RFP).
- 3.5.8 Redlines to the University Terms and Conditions (ref. **Section 4** and **APPENDIX TWO**).

SECTION 4

GENERAL TERMS AND CONDITIONS

The terms and conditions contained in the attached Agreement (ref. **APPENDIX TWO**) or, in the sole discretion of University, terms and conditions substantially similar to those contained in the Agreement, will constitute and govern any agreement that results from this RFP. If Proposer takes exception to any terms or conditions set forth in the Agreement, Proposer will submit redlined **APPENDIX TWO** as part of its proposal in accordance with **Section 5.2.1** of this RFP.

Additionally, Proposer must submit as part of its Proposal all terms and conditions that it proposes to include in any contract or agreement resulting from this RFP (such as software license terms and conditions) in accordance with **Section 5.2.1** of this RFP. Proposer bears all risk and responsibility for its failure to include such terms and conditions in its Proposal. The University will not be bound by or required to accept or agree to any terms and conditions that a Proposer includes (or fails to include) in its Proposal.

Proposer's exceptions and proposed terms and conditions will be reviewed by University and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then University may consider Proposer's exceptions when University evaluates the Proposer's proposal.

SECTION 5

SPECIFICATIONS AND ADDITIONAL QUESTIONS

5.1 General

The minimum requirements and the specifications for the Services, as well as certain requests for information to be provided by Proposer as part of its proposal, are set forth below. As indicated in **Section 2.3** of this RFP, the successful Proposer is referred to as the “**Contractor.**”

Contract Term: University intends to enter into an agreement with the Contractor to perform the Services for an initial three (3) year base term, with the option to renew for two (2) additional one (1) year renewal periods, upon mutual written agreement of both parties.

Approval by the Board of Regents: No Agreement resulting from this RFP will be effective for amounts exceeding one million dollars (\$1,000,000) until approved by the Board of Regents of The University of Texas System.

Multiple Awards: It may be determined that having Secure Testing and Proctoring Services provided by multiple vendors is more appealing to UT Institutions. Therefore, University reserves the right to make multiple awards against this RFP. UT Institutions will choose the Solution and execute an Order Form with chosen Provider.

5.2 Minimum Requirement

Proposer must clearly state in its Proposal that Solution meets the following minimum requirement.

Solution must be able to integrate with major LMS Systems (e.g. Blackboard, Canvas, etc.).

5.3 Additional Questions Specific to this RFP

Proposer must submit the following information as part of Proposer’s proposal:

- 5.3.1 If Proposer takes exception to any terms or conditions set forth in the Agreement (ref. **APPENDIX TWO**), Proposer must redline **APPENDIX TWO** and include **APPENDIX TWO** as part of its Proposal. If Proposer agrees with terms or conditions set forth in the **APPENDIX TWO**, Proposer will submit a written statement acknowledging it.
- 5.3.2 In its proposal, Proposer must indicate whether it will consent to include in the Agreement the “Access by Individuals with Disabilities” language that is set forth in **APPENDIX THREE, Access by Individuals with Disabilities**. If Proposer objects to the inclusion of the “Access by Individuals with Disabilities” language in the Agreement, Proposer must, as part of its proposal, specifically identify and describe in detail all of the reasons for Proposer’s objection. NOTE THAT A GENERAL OBJECTION IS NOT AN ACCEPTABLE RESPONSE TO THIS QUESTION. NOTE THAT PROPOSER IS REQUIRED TO SUBMIT COMPLETED VPAT (VOLUNTARY PRODUCT ACCESSIBILITY TEMPLATE) WITH PROPOSAL. VPAT document to complete is located at the following website: <https://www.itic.org/dotAsset/d432b9da-3696-47fe-a521-7d0458d48202.doc>
- 5.3.3 In its proposal, Proposer must respond to each item listed in **APPENDIX FOUR**, Higher Education Vendor Assessment Tool (**HECVAT**).
- 5.3.4 By signing the Execution of Offer (ref. **Section 2** of **APPENDIX ONE**), Proposer agrees to comply with Certificate of Interested Parties laws (ref. [§2252.908, Government Code](#))

and [1 TAC §§46.1 through 46.5](#)) as implemented by the Texas Ethics Commission (“TEC”), including, among other things, providing TEC and University with information required on the form promulgated by TEC and set forth in **APPENDIX FIVE**. *Proposer may learn more about these disclosure requirements, including applicable exceptions and use of the TEC electronic filing system, by reviewing [§2252.908, Government Code](#), and information on the TEC website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html. **The Certificate of Interested Parties must only be submitted by Contractor upon delivery to University of a signed Agreement.***

5.4 Scope of Work

Provide proctoring solutions across various programs of instruction and learning modalities. Access to education is a primary concern, and innovative models of proctoring are sought to support increasing access to higher education within Texas and beyond. University is interested in effective, scalable, and innovative approaches to validating identity, supporting the online assessment process across modes of assessment, monitoring of the online assessment environment, anomaly detection to provide appropriate alerting or intervention, and systemic methods of cheating prevention / integrity assurance.

Contractor will provide the following services to University:

5.4.1 Core Function – Remote Proctoring

- A. Conduct web-based and mobile-device-based Proctoring Solution for students in distance and blended learning.
- B. Conduct web-based proctoring on a pre-existing or new exam during instructor-specified exam window.
- C. Services must include technical support suitable for faculty, students, and administrators.
- D. Services must include video, screen capture, and audio recordings of the entirety of the assessments for review by faculty and / or the identified university administrators.
- E. Access may be granted to both faculty and the identified administrative staff to review completed exam materials included: records (audio, visual), uploaded images, written documentation provided by the proctor (if applicable), and status of testing sessions.
- F. Services must be consistent with the standards for Test Centers as identified by the National College Testing Association (NCTA).
- G. Comprehensive tutorials are provided for students in multiple formats for accessibility purposes.
- H. Provide a high quality experience to students while requiring minimal bandwidth internet connection.
- I. Provide for students a bandwidth acceptability test in the setup process to determine whether or not there is a sufficient internet connection for the services. Provide the following information:
 - Minimum bandwidth requirements.
 - Software adaptations for low bandwidth environments.
 - Compatibility tool kit to identify whether or not a student's computer will be compatible with the services provided.
- J. Video, screen capturing, and audio recordings of assessments for review by faculty and / or University administrators.
- K. Take and store notes as to student's behavior observed during an exam. Such notes will be stored and made available to the Faculty and University administrators.

5.4.2 Solution Integrity

- A. Verify students via ID (e.g. Student ID Card, Driver's License), and / or automated facial recognition.
- B. Thorough validation process determine the student signing in for the assessment is the same student taking the assessment.
- C. Intervention controls / labeling of occurrences when the integrity of the assessment has been compromised or is at stake.

5.4.3 Monitoring Assessments and Reporting.

- A. Forty-eight (48) hours, or two (2) business day turnaround for assessment reviews conducted by Proposer's Solution. Any intervention controls, reports, and / or labeling shall be concluded within this time span.
- B. Ability to generate statistical reports of usage.

5.4.4 Provide technical support to Students, Faculty and Instructors.

- A. Faculty is an individual leading a course that a student is enrolled into and is also the individual responsible for determining whether or not academic assessments (in the form of proctor testing) will be conducted during the course duration. The faculty member is responsible for setting the dates of the exam(s) as well as identifying what resources are or are not allowed during the assessment. In the case of assessment violations, the faculty will have the final say in whether or not an infraction has occurred and will determine the next steps, if any, for documentation purposes.
 - 1. A faculty member may serve in the role of faculty evaluation "administrator" for the course(s) they are assigned to in order to:
 - Setup assessment sessions by applying: a) Individual guidelines; b) Open/Close dates; c) Password protection; d) Choose lockdown capabilities.
 - Review Submitted reports / flagging of completed sessions by the proctor.
 - Review uploaded images, or the student validation process.
 - Review recordings of completed sessions in its entirety.
 - Review student status of assessments including (but not limited to): assessment scheduling, in progress sessions, completed assessments.
 - 2. Setup exam sessions.
 - 3. Access to technical support services 24/7/365 (with the exceptions of major holidays), through means of chat, phone, or email submission.
- B. Students are the individuals served by the UT community. UT students are a highly diverse population that includes traditional learners, part-time students, non-traditional (older) students, students who lack physical access to the campus, etc.
 - 1. Students must have access to experimental platforms to test out services before the actual assessment takes place.
 - 2. Students must have access to technical support services 24/7/365 (with the exceptions of major holidays), preferably through chat or phone.
 - 3. Comprehensive tutorials should be provided for students in multiple formats for accessibility purposes.

- C. Administrators must have full access to all course/assessment settings and records for administrative use, and any other normal administrative functions that a service of this nature would require. Administrators have access to immediate (acknowledgement of request > 2 hours from when the request was submitted during business hours) live technical support services 24/7/365, through means of chat, phone, or email communications.

Administrators have the capability of serving as a mediatory between proctors, faculty, and students.

5.4.5 Ensure privacy and FERPA compliance.

- A. Provide clear and conspicuous information to students regarding the student information obtained from them, the use of the data, and applicable destruction or sharing of such data.
- B. Demonstrate ongoing monitoring of user access, when requested, to retained files, information, pictures, notes, etc., gathered during the live and video proctoring process.
- C. Executables or system components downloaded to the student's device must be automatically uninstalled at session completion.

5.4.6 Solution Technology

- A. Cloud-based solution (SaaS).
- B. Compliance with all state electronic information resources accessibility requirements.
- C. Must be compliant with Payment Card Industry (PCI) standards (have an attestation of compliance for service providers).
- D. Ability to scale to meet increased demand without downtime.
- E. Support Android and iPhone mobile devices.
- F. All website content must be clearly visible and functional in Internet Explorer, Safari, Microsoft Edge, Firefox, and Google Chrome browsers.
- G. The log-on page must not allow the browser to store the information entered in the cache. The auto-complete feature must be turned off for every form.
- H. Secure access using at minimum SSL/HTTPS to access application and web services.
- I. Integrate with UT Institution's single-sign on technology (SAML, Shibboleth, etc.).
- J. Provide notification services to disseminate outages, planned or unplanned, in a timely and efficient manner.
- K. All security relevant information needs to be logged such as detected attacks, failed login attempts, and attempts to exceed authorization.

- L. Provide temporary access to the software to perform a quality and requirements review of software features, including mobile application(s), as a part of the RFP process. If available, provide links to the demos readily available online for viewing.

5.4.7 Administration, Support and Maintenance

- A. Provide 24/7/365 baseline support services for students, faculty, and administrators, including chat, phone, or email.
- B. Have a history of reasonable response times associated with service-related incidents.
- C. Offer a dedicated account manager.
- D. Provide training and detailed software, database, and process manuals.
- E. Adhere to appropriate communications for all scheduled maintenance, changes, and upgrades.
- F. Demonstrate ongoing or annual training of proctors of requirements under FERPA to serve as a designated school official.

5.5 Additional Questions Specific to this RFP

Proposer must submit the following information as part of Proposer's proposal:

Vendor Experience (10%)

1. Provide references from three (3) of Proposer's customers from the past five (5) years for services that are similar in scope, size, and complexity to the Services described in this RFP.

Provide the following information for each customer:

- Customer name and address;
 - Contact name with email address and phone number;
 - Time period in which work was performed;
 - Short description of work performed.
2. Has Proposer worked with University institutions in the past five (5) years? If "yes," state University Institution name, department name, department contact, and provide a brief description of work performed.
 3. Describe the history and background of Proposer's company.
 4. Describe Proposer's core product and service lines, and any optional services Proposer provides.
 5. Describe Proposer's experience in providing secure testing and proctoring services to large, public-sector organizations.

Platform Technology, Security and Functionality (20%)

6. Describe the user experience of Proposer's Solution, including mobile application capabilities, for students, administrative users and faculty.
7. How often is maintenance performed and how is this communicated to clients? Does maintenance require downtime? For how long?
8. Explain how Proposer manages system enhancements. How often is Proposer's Solution upgraded?
9. How does Proposer monitor the computer screen and ensure that the student does not stray from the exam? Describe the solution used to accomplish this.
10. List operating systems are supported by Proposer's Solution.
11. Explain if the Solution function within a native iOS or Android application.
12. Explain if the Solution integrate with applications outside the LMS via means other than LTI?
13. Describe the scalability of the Solution.
14. How many synchronous test takers can be supported in order to allow for the shortest possible exam window (ie # of student exams per hour?)
15. Describe any software / systems that are part of the Solution.
16. Describe any people roles that are part of the Solution.
17. Is there a participation grade pass-back or tracking system which is cross-referenceable to the LMS gradebook using student ID to denote that a student has scheduled the exam? Explain.
18. Does Proposer's Solution support students in multiple languages? What languages does it support?
19. Describe options that are available for asynchronous proctoring.
20. Describe the options available for paper-based test responses.
21. Explain how suspicious activity is reported to the instructor.
22. Describe the footprint of the solution on the test taker's device.
23. Explain how the student can be assured that monitoring only occurs during elective testing sessions.
24. Explain how the student is provided with information on the gathering and storage of their information.
25. Independent of the solution's protections, explain the threat of cheating / defeating accurate identity verification. How does the Solution minimize the risk of inaccurate identity verification?

26. Independent of the Solution's protections, explain the threat of cheating / defeating other intended objectives of a proctoring solution, including, but not limited to, ensuring a secure workspace, protecting against collusion, using other devices or notes, etc. Explain the countermeasures Proposer's Solution provides to address these threats.
27. Does Proposer's Solution store, process, or transmit cardholder (payment / credit / debit card) data?
28. Is Proposer compliant with the Payment Card Industry Data Security Standard (PCI DSS)?
29. Does Proposer have a current, executed within the past year, Attestation of Compliance (AoC) or Report on Compliance (RoC)? Provide if available.
30. Is Proposer classified as a service provider? Is Proposer on the list of VISA approved service providers? Is Proposer classified as a merchant? If so, what level (1, 2, 3, 4)? Explain.
31. Describe the architecture employed by Solution to verify and authorize credit card transactions.
32. List payment processors / gateways that Solution supports
33. Can Solution be installed in a PCI DSS compliant manner? Explain.
34. Is Solution listed as an approved PA-DSS application?
35. Does Solution use a third party to collect, store, process, or transmit cardholder (payment / credit / debit card) data? Explain.
36. Include documentation describing Solution's ability to comply with the PCI DSS and any features or capabilities of Solution that must be added or changed in order to operate in compliance with the standards.

Monitoring Assessments (20%)

37. How does Proposer monitor students (audio, visual, desktop) to make sure the test environment is secure and remains secure throughout the testing session? Explain how the connection is established. List the required hardware.
38. Explain the location or area where a Proctor conducts a video monitoring session. Describe the environment, and whether telecommuting is allowed for Proctors.
39. Explain Proposer's process for auditing proctoring behavior, conducting background checks, recruiting, and any other relevant information about screening / assuring people in the proctoring process help maintain the integrity of the process.
40. Explain the security measures in place to make sure the student does not replicate or share the exam
41. Explain how the exams are recorded. Where are they stored? How much of the session is available? How long are they stored?
42. Explain the measures taken to ensure that students take the exam using the proctoring solution (passwords, rosters, etc.).

43. Explain if there are any restrictions on the type of exams that can be proctored.
44. Explain how the Solution handles multiple attempts or save and return exams.
45. Explain how the Solution addresses open notes assessments.
46. List the steps taken to verify the identity of a student before taking an exam.
47. What options does the faculty member have to customize the testing environment (allowing for materials, levels of activity, etc.)?
48. Explain where the exams are authored. Is there a proprietary platform or website required to create exams?
49. Explain how the exams are delivered to the students. Is there a proprietary platform required to deliver the exams or monitor the students?
50. How are results delivered to faculty at scale? Is there a proprietary platform or website required to deliver the results? Is student ID used as a key to allow for efficient review within the LMS, or at least cross-referenceable with the LMS?
51. Explain what information is collected during the exam. How is this displayed to the faculty?
52. How does the Solution determine that the student has successfully completed the exam?
53. How does the Solution prevent unmonitored exam taking?
54. Explain how does Solution collect details regarding the type of exam (time limits, exam window, exam password, open/closed note, etc.).
55. How do students schedule an exam? How far in advance do they have to schedule their exam? Are there any fees associated with scheduling?
56. What hours are proctors available to monitor an exam?
57. What is the average wait-time or set-up time for a student to take an exam? Is there an initial registration process the student must complete? If so, how much time is needed for registration?
58. Do you have the ability to make accommodations for students who need to take the exam outside of the specified exam window? How is this handled?
59. What are the hours of operation for technical support?
60. Is there a means by which faculty, administrators and students can receive real-time technical support during a tight exam window where the exam is being conducted at scale, either during or outside of normal business hours?
61. What is the maximum response time for critical, moderate, and low-priority support tickets?

62. Does Proposer have online documentation for students and instructors (knowledgebase, help center, privacy statement or equivalent)?
63. Does Proposer provide opportunities for students to test their equipment?
64. Are there specific support numbers for students, faculty and administrators respectively?
65. Are technical support numbers issued to each UT Institution? Are these numbers available internationally?
66. What allowances are made for student who use borrowed equipment or shared lab spaces to take exams?
67. Provide the policy for resuming an exam after disconnection due to a technical issue.
68. Identify any and all reporting tools that are available for administrative purposes.

Privacy and FERPA Compliance (10%)

69. Explain how long the recordings and exam data are stored on Proposer's servers?
70. Is any personally identifiable information transmitted to the Solution? If so, how is this transmitted and stored? How long is it stored?
71. Who can view the exam data? How does Proposer ensure that only authorized users are capable of viewing the data?
72. If system components are downloaded to the student's device as part of the installation process, are those components automatically uninstalled at session completion, or do they remain on the device until removed by the student?
73. Does the integration with the LMS support single sign on?
74. Describe the efforts Proposer intends to take to ensure compliance with the General Data Protection Regulation (GDPR) for data that comes from an individual located in a European Union member state. Include any statements, consent language or forms used by Proposer to engage with a customer when GDPR compliance may be required.
75. Explain the process used for students entering financial information such as credit card, debit card, or other banking information into the Solution, if applicable.
76. Describe efforts to comply with the Payment Card Industry Security Standards (PCI) for the receipt and processing of such information.

Integration, Licensing and Maintenance (10%)

77. Explain how does the remote proctoring solution integrates with the LMS. Detail the integration process, resources needed from Institution and Contractor.
78. Is there any hardware or solution that is required within UT Institutions?
79. Are administrative rights within the LMS required to complete the integration?

80. How do administrative permissions work at the class level? College level? UT Institution level? System level?
81. Is standalone browser lockdown an option? Explain.
82. Is standalone Identity Verification an option? Explain.
83. Describe Proposer's pricing model. For example, for traditional licensing models, this might include an initial fee, per seat fee, and maintenance fees and terms. Do not include actual pricing in this section (pricing should be provided in Section 6.1 of this RFP).
84. Describe Proposer's most basic maintenance package, and summarize the services, deliverables and terms included (for example, bug fixes, patches, service packs and associated services). Describe enhanced maintenance packages available and summarize their features.
85. Is maintenance priced as a percentage of license cost? If so, are maintenance fees based on the discounted license cost or on list prices?
86. Does Proposer offer caps on year-over-year increases in maintenance fees? Explain.

SECTION 6

PRICING AND DELIVERY SCHEDULE

Proposal of: _____
(Proposer Company Name)

To: The University of Texas System

RFP No.:

Ladies and Gentlemen:

Having carefully examined all the specifications and requirements of this RFP and any attachments thereto, the undersigned proposes to furnish the required pursuant to the above-referenced Request for Proposal upon the terms quoted (firm fixed price) below. The University will not accept proposals which include assumptions or exceptions to the work identified in this RFP.

6.1 Pricing for Services Offered (30%)

Provide cost per user per exam (student, faculty, administrator if applicable). Proposer may include tiered pricing, based on the number of users or exam length.

6.2 Discounts

Describe all discounts that may be available to University, including, educational, federal, state and local discounts.

6.3 Delivery Schedule of Events and Time Periods

Indicate number of calendar days needed to commence the Services from the execution of the services agreement:

_____ Calendar Days

6.4 Payment Terms

University's standard payment terms are "net 30 days" as mandated by the *Texas Prompt Payment Act* (ref. [Chapter 2251, Government Code](#)).

Indicate below the prompt payment discount that Proposer offers:

Prompt Payment Discount: _____% _____ days / net 30 days.

[Section 51.012, Education Code](#), authorizes University to make payments through electronic funds transfer methods. Proposer agrees to accept payments from University through those methods, including the automated clearing house system ("ACH"). Proposer agrees to provide Proposer's banking information to University in writing on Proposer letterhead signed by an authorized representative of Proposer. Prior to the first payment, University will confirm Proposer's banking information. Changes to Proposer's bank information must be communicated to University in writing

at least thirty (30) days before the effective date of the change and must include an [IRS Form W-9](#) signed by an authorized representative of Proposer.

University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with [§151.309, Tax Code](#), and [Title 34 TAC §3.322](#). Pursuant to [34 TAC §3.322\(c\)\(4\)](#), University is not required to provide a tax exemption certificate to establish its tax exempt status.

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX ONE
PROPOSAL REQUIREMENTS

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SECTION 1

GENERAL INFORMATION

1.1 Purpose

University is soliciting competitive sealed proposals from Proposers having suitable qualifications and experience providing services in accordance with the terms, conditions and requirements set forth in this RFP. This RFP provides sufficient information for interested parties to prepare and submit proposals for consideration by University.

By submitting a proposal, Proposer certifies that it understands this RFP and has full knowledge of the scope, nature, quality, and quantity of the services to be performed, the detailed requirements of the services to be provided, and the conditions under which such services are to be performed. Proposer also certifies that it understands that all costs relating to preparing a response to this RFP will be the sole responsibility of the Proposer.

PROPOSER IS CAUTIONED TO READ THE INFORMATION CONTAINED IN THIS RFP CAREFULLY AND TO SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS AND QUESTIONS AS DIRECTED.

1.2 Inquiries and Interpretations

University may in its sole discretion respond in writing to written inquiries concerning this RFP and mail its response as an Addendum to all parties recorded by University as having received a copy of this RFP. Only University's responses that are made by formal written Addenda will be binding on University. Any verbal responses, written interpretations or clarifications other than Addenda to this RFP will be without legal effect. All Addenda issued by University prior to the Submittal Deadline will be and are hereby incorporated as a part of this RFP for all purposes.

Proposers are required to acknowledge receipt of each Addendum as specified in this Section. The Proposer must acknowledge all Addenda by completing, signing and returning the Addenda Checklist (ref. **Section 4 of APPENDIX ONE**). The Addenda Checklist must be received by University prior to the Submittal Deadline and should accompany the Proposer's proposal.

Any interested party that receives this RFP by means other than directly from University is responsible for notifying University that it has received an RFP package, and should provide its name, address, telephone and facsimile (**FAX**) numbers, and email address, to University, so that if University issues Addenda to this RFP or provides written answers to questions, that information can be provided to that party.

1.3 Public Information

Proposer is hereby notified that University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information.

University may seek to protect from disclosure all information submitted in response to this RFP until such time as a final agreement is executed.

Upon execution of a final agreement, University will consider all information, documentation, and other materials requested to be submitted in response to this RFP, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the *Texas Public Information Act* (ref. [Chapter 552, Government Code](#)). Proposer will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under §§[552.101](#), [552.104](#), [552.110](#), [552.113](#), and [552.131](#), *Government Code*.

1.4 Type of Agreement

Contractor, if any, will be required to enter into a contract with University in a form substantially similar to the University Terms and Conditions (the "**Agreement**") attached to this RFP as **APPENDIX TWO** and incorporated for all purposes.

1.5 Proposal Evaluation Process

University will select Contractor by using the competitive sealed proposal process described in this Section. Any proposals that are not submitted by the Submittal Deadline will be rejected by University as non-responsive due to material failure to comply with this RFP. Upon completion of the initial review and evaluation of proposals, University may invite one or more selected Proposers to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of a proposal prior to selection of Contractor.

University may make the selection of Contractor on the basis of the proposals initially submitted, without discussion, clarification or modification. In the alternative, University may make the selection of Contractor on the basis of negotiation with any of the Proposers. In conducting negotiations, University will use commercially reasonable efforts to avoid disclosing the contents of competing proposals.

University may discuss and negotiate all elements of proposals submitted by Proposers within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the proposals, a competitive range of acceptable or potentially acceptable proposals composed of the highest rated proposal(s). In that event, University may defer further action on proposals not included within the competitive range pending the selection of Contractor; provided, however, University reserves the right to include additional proposals in the competitive range if deemed to be in the best interest of University.

After the Submittal Deadline but before final selection of Contractor, University may permit Proposer to revise its proposal in order to obtain the Proposer's best and final offer. In that event, representations made by Proposer in its revised proposal, including price and

fee quotes, will be binding on Proposer. University will provide each Proposer within the competitive range with an equal opportunity for discussion and revision of its proposal. University is not obligated to select the Proposer offering the most attractive economic terms if that Proposer is not the most advantageous to University overall, as determined by University.

University reserves the right to (a) enter into an agreement for all or any portion of the requirements and specifications set forth in this RFP with one or more Proposers, (b) reject any and all proposals and re-solicit proposals, or (c) reject any and all proposals and temporarily or permanently abandon this selection process, if deemed to be in the best interests of University. Proposer is hereby notified that University will maintain in its files concerning this RFP a written record of the basis upon which a selection, if any, is made by University.

1.6 Proposer's Acceptance of RFP Terms

Proposer (1) accepts [a] Proposal Evaluation Process (ref. **Section 1.5 of APPENDIX ONE**), [b] Criteria for Selection (ref. **2.3** of this RFP), [c] Specifications and Additional Questions (ref. **Section 5** of this RFP), [d] terms and conditions of the Agreement (ref. **APPENDIX TWO**), and [e] all other requirements and specifications set forth in this RFP; and (2) acknowledges that some subjective judgments must be made by University during this RFP process.

1.7 Solicitation for Proposal and Proposal Preparation Costs

Proposer understands and agrees that (1) this RFP is a solicitation for proposals and University has made no representation written or oral that one or more agreements with University will be awarded under this RFP; (2) University issues this RFP predicated on University's anticipated requirements for the Services, and University has made no representation, written or oral, that any particular scope of services will actually be required by University; and (3) Proposer will bear, as its sole risk and responsibility, any cost that arises from Proposer's preparation of a proposal in response to this RFP.

1.8 Proposal Requirements and General Instructions

- 1.8.1 Proposer should carefully read the information contained herein and submit a complete proposal in response to all requirements and questions as directed.
- 1.8.2 Proposals and any other information submitted by Proposer in response to this RFP will become the property of University.
- 1.8.3 University will not provide compensation to Proposer for any expenses incurred by the Proposer for proposal preparation or for demonstrations or oral presentations that may be made by Proposer. Proposer submits its proposal at its own risk and expense.
- 1.8.4 Proposals that (i) are qualified with conditional clauses; (ii) alter, modify, or revise this RFP in any way; or (iii) contain irregularities of any kind, are subject to disqualification by University, at University's sole discretion.
- 1.8.5 Proposals should be prepared simply and economically, providing a straightforward, concise description of Proposer's ability to meet the requirements and specifications of this RFP. Emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP.
- 1.8.6 University makes no warranty or guarantee that an award will be made as a result of this RFP. University reserves the right to accept or reject any or all proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the Agreement when deemed to be in University's best interest. University reserves the right to seek clarification from any Proposer concerning any item contained in its proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to University, at University's sole discretion. Representations made by Proposer within its proposal will be binding on Proposer.
- 1.8.7 Any proposal that fails to comply with the requirements contained in this RFP may be rejected by University, in University's sole discretion.

1.9 Preparation and Submittal Instructions

1.9.1 Specifications and Additional Questions

Proposals must include responses to the questions in Specifications and Additional Questions (ref. **Section 5** of this RFP). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N / A (Not Applicable) or N / R (No Response), as appropriate. Proposer should explain the reason when responding N / A or N / R.

1.9.2 Execution of Offer

Proposer must complete, sign and return the attached Execution of Offer (ref. **Section 2** of **APPENDIX ONE**) as part of its proposal. The Execution of Offer must be signed by a representative of Proposer duly authorized to bind the Proposer to its proposal. Any proposal received without a completed and signed Execution of Offer may be rejected by University, in its sole discretion.

1.9.3 Pricing and Delivery Schedule

Proposer must complete and return the Pricing and Delivery Schedule (ref. **Section 6** of this RFP), as part of its proposal. In the Pricing and Delivery Schedule, the Proposer should describe in detail (a) the total fees for the entire scope of the Services; and (b) the method by which the fees are calculated. The fees must be inclusive of all associated costs for delivery, labor, insurance, taxes, overhead, and profit.

University will not recognize or accept any charges or fees to perform the Services that are not specifically stated in the Pricing and Delivery Schedule.

In the Pricing and Delivery Schedule, Proposer should describe each significant phase in the process of providing the Services to University, and the time period within which Proposer proposes to be able to complete each such phase.

1.9.4 Proposer's General Questionnaire

Proposals must include responses to the questions in Proposer's General Questionnaire (ref. **Section 3** of **APPENDIX ONE**). Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N / A (Not Applicable) or N / R (No Response), as appropriate. Proposer should explain the reason when responding N / A or N / R.

1.9.5 Addenda Checklist

Proposer should acknowledge all Addenda to this RFP (if any) by completing, signing and returning the Addenda Checklist (ref. **Section 4** of **APPENDIX ONE**) as part of its proposal. Any proposal received without a completed and signed Addenda Checklist may be rejected by University, in its sole discretion.

1.9.6 Submission

*Proposer should submit all proposal materials as instructed in **Section 3** of this RFP. RFP No. (ref. **Title Page** of this RFP) and Submittal Deadline (ref. **Section 2.1** of this RFP) should be clearly shown (1) in the Subject line of any email transmitting the proposal, and (2) in the lower left-hand corner on the top surface of any envelope or package containing the proposal. In addition, the name and the return address of the Proposer should be clearly visible in any email or on any envelope or package.*

University will not under any circumstances consider a proposal that is received after the Submittal Deadline or which is not accompanied by the HSP as required by **Section 2.5** of this RFP. University will not accept proposals submitted by email, telephone or FAX transmission.

Except as otherwise provided in this RFP, no proposal may be changed, amended, or modified after it has been submitted to University. However, a proposal may be withdrawn and resubmitted at any time prior to the Submittal Deadline. No proposal may be withdrawn after the Submittal Deadline without University's consent, which will be based on Proposer's written request explaining and documenting the reason for withdrawal, which is acceptable to University.

SECTION 2

EXECUTION OF OFFER

THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED WITH PROPOSER'S PROPOSAL. FAILURE TO COMPLETE, SIGN AND RETURN THIS EXECUTION OF OFFER WITH THE PROPOSER'S PROPOSAL MAY RESULT IN THE REJECTION OF THE PROPOSAL.

- 2.1 Representations and Warranties.** Proposer represents, warrants, certifies, acknowledges, and agrees as follows:
- 2.1.1 Proposer will furnish the Services to University and comply with all terms, conditions, requirements and specifications set forth in this RFP and any resulting Agreement.
 - 2.1.2 This RFP is a solicitation for a proposal and is not a contract or an offer to contract. Submission of a proposal by Proposer in response to this RFP will not create a contract between University and Proposer. University has made no representation or warranty, written or oral, that one or more contracts with University will be awarded under this RFP. Proposer will bear, as its sole risk and responsibility, any cost arising from Proposer's preparation of a response to this RFP.
 - 2.1.3 Proposer is a reputable company that is lawfully and regularly engaged in providing the Services.
 - 2.1.4 Proposer has the necessary experience, knowledge, abilities, skills, and resources to perform the Services.
 - 2.1.5 Proposer is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances relating to performance of the Services.
 - 2.1.6 Proposer understands (i) the requirements and specifications set forth in this RFP and (ii) the terms and conditions set forth in the Agreement under which Proposer will be required to operate.
 - 2.1.7 Proposer will not delegate any of its duties or responsibilities under this RFP or the Agreement to any sub-contractor, except as expressly provided in the Agreement.
 - 2.1.8 Proposer will maintain any insurance coverage required by the Agreement during the entire term.
 - 2.1.9 All statements, information and representations prepared and submitted in response to this RFP are current, complete, true and accurate. University will rely on such statements, information and representations in selecting Contractor. If selected by University, Proposer will notify University immediately of any material change in any matters with regard to which Proposer has made a statement or representation or provided information.
 - 2.1.10 PROPOSER WILL DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, INDEMNIFY, AND HOLD HARMLESS UNIVERSITY, THE STATE OF TEXAS, AND ALL OF THEIR REGENTS, OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND OTHER CLAIMS OF ANY NATURE, KIND OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTling ANY OF THE FOREGOING, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF PROPOSER OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF PROPOSER IN THE EXECUTION OR PERFORMANCE OF ANY CONTRACT OR AGREEMENT RESULTING FROM THIS RFP.
 - 2.1.11 Pursuant to §§[2107.008](#) and [2252.903](#), *Government Code*, any payments owing to Proposer under the Agreement may be applied directly to any debt or delinquency that Proposer owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.
 - 2.1.12 Any terms, conditions, or documents attached to or referenced in Proposer's proposal are applicable to this procurement only to the extent that they (a) do not conflict with the laws of the State of Texas or this RFP, and (b) do not place any requirements on University that are not set forth in this RFP. Submission of a proposal is Proposer's good faith intent to enter into the Agreement with University as specified in this RFP and that Proposer's intent is not contingent upon University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in Proposer's proposal.
 - 2.1.13 Pursuant to [Chapter 2270, Government Code](#), Proposer certifies Proposer (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of the Agreement. Proposer acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate.
 - 2.1.14 Pursuant to [Subchapter F, Chapter 2252, Government Code](#), Proposer certifies Proposer is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Proposer acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate.
- 2.2 No Benefit to Public Servants.** Proposer has not given or offered to give, nor does Proposer intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its proposal. Failure to sign this Execution of Offer, or signing with a false statement, may void the submitted proposal or any resulting Agreement, and Proposer may be removed from all proposer lists at University.
- 2.3 Tax Certification.** Proposer is not currently delinquent in the payment of any taxes due under [Chapter 171, Tax Code](#), or Proposer is exempt from the payment of those taxes, or Proposer is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. A false certification will be deemed a material breach of any resulting contract or agreement and, at University's option, may result in termination of any resulting Agreement.

- 2.4 Antitrust Certification.** Neither Proposer nor any firm, corporation, partnership or institution represented by Proposer, nor anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in [§15.01 et seq., Business and Commerce Code](#), or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 2.5 Authority Certification.** The individual signing this document and the documents made a part of this RFP, is authorized to sign the documents on behalf of Proposer and to bind Proposer under any resulting Agreement.
- 2.6 Child Support Certification.** Under [§231.006, Family Code](#), relating to child support, the individual or business entity named in Proposer's proposal is not ineligible to receive award of the Agreement, and any Agreements resulting from this RFP may be terminated if this certification is inaccurate.
- 2.7 Relationship Certifications.**
- No relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Proposer that is a sole proprietorship, the officers or directors of any Proposer that is a corporation, the partners of any Proposer that is a partnership, the joint venturers of any Proposer that is a joint venture, or the members or managers of any Proposer that is a limited liability company, on one hand, and an employee of any member institution of University, on the other hand, other than the relationships which have been previously disclosed to University in writing.
 - Proposer has not been an employee of any member institution of University within the immediate twelve (12) months prior to the Submittal Deadline.
 - No person who, in the past four (4) years served as an executive of a state agency was involved with or has any interest in Proposer's proposal or any contract resulting from this RFP (ref. [§669.003, Government Code](#)).
 - All disclosures by Proposer in connection with this certification will be subject to administrative review and approval before University enters into any Agreement resulting from this RFP with Proposer.
- 2.8 Compliance with Equal Employment Opportunity Laws.** Proposer is in compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
- 2.9 Compliance with Safety Standards.** All products and services offered by Proposer to University in response to this RFP meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law ([Public Law 91-596](#)) and the *Texas Hazard Communication Act*, [Chapter 502, Health and Safety Code](#), and all related regulations in effect or proposed as of the date of this RFP.
- 2.10 Exceptions to Certifications.** Proposer will and has disclosed, as part of its proposal, any exceptions to the information stated in this *Execution of Offer*. All information will be subject to administrative review and approval prior to the time University makes an award or enters into any Agreement with Proposer.
- 2.11 Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act Certification.** If Proposer will sell or lease computer equipment to University under any Agreement resulting from this RFP then, pursuant to [§361.965\(c\), Health & Safety Code](#), Proposer is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in [Chapter 361, Subchapter Y, Health & Safety Code](#), and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in [30 TAC Chapter 328, §361.952\(2\), Health & Safety Code](#), states that, for purposes of the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act, the term "computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.
- 2.12 Conflict of Interest Certification.**
- Proposer is not a debarred vendor or the principal of a debarred vendor (i.e. owner, proprietor, sole or majority shareholder, director, president, managing partner, etc.) either at the state or federal level.
 - Proposer's provision of services or other performance under any Agreement resulting from this RFP will not constitute an actual or potential conflict of interest.
 - Proposer has disclosed any personnel who are related to any current or former employees of University.
 - Proposer has not given, nor does Proposer intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to an officer or employee of University in connection with this RFP.
- 2.13 Proposer should complete the following information:**

If Proposer is a Corporation, then State of Incorporation: _____

If Proposer is a Corporation, then Proposer's Corporate Charter Number: _____

RFP No.: 720-1918 Secure Testing and Proctoring Services

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER [§§552.021 AND 552.023, GOVERNMENT CODE](#), INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER [§559.004, GOVERNMENT CODE](#), INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Submitted and Certified By:

(Proposer Institution's Name)

(Signature of Duly Authorized Representative)

(Printed Name / Title)

(Date Signed)

(Proposer's Street Address)

(City, State, Zip Code)

(Telephone Number)

(FAX Number)

(Email Address)

SECTION 3

PROPOSER'S GENERAL QUESTIONNAIRE

NOTICE: WITH FEW EXCEPTIONS, INDIVIDUALS ARE ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER §§552.021 AND 552.023, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER §559.004, GOVERNMENT CODE, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

Proposals must include responses to the questions contained in this Proposer's General Questionnaire. Proposer should reference the item number and repeat the question in its response. In cases where a question does not apply or if unable to respond, Proposer should refer to the item number, repeat the question, and indicate N / A (Not Applicable) or N / R (No Response), as appropriate. Proposer will explain the reason when responding N / A or N / R.

3.1 Proposer Profile

3.1.1 Legal name of Proposer company:

Address of principal place of business:

Address of office that would be providing service under the Agreement:

Number of years in Business: _____

State of incorporation: _____

Number of Employees: _____

Annual Revenues Volume: _____

Name of Parent Corporation, if any _____

NOTE: If Proposer is a subsidiary, University prefers to enter into a contract or agreement with the Parent Corporation or to receive assurances of performance from the Parent Corporation.

3.1.2 State whether Proposer will provide a copy of its financial statements for the past two (2) years, if requested by University.

3.1.3 Proposer will provide a financial rating of the Proposer entity and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of Proposer.

3.1.4 Is Proposer currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, Proposer will explain the expected impact, both in organizational and directional terms.

3.1.5 Proposer will provide any details of all past or pending litigation or claims filed against Proposer that would affect its performance under the Agreement with University (if any).

3.1.6 Is Proposer currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity? If yes, Proposer will specify the pertinent date(s), details, circumstances, and describe the current prospects for resolution.

3.1.7 Proposer will provide a customer reference list of no less than three (3) organizations with which Proposer currently has contracts and / or to which Proposer has previously provided services (within the past five (5) years) of a type and scope similar to those required by University's RFP. Proposer will include in its customer reference list the customer's company name, contact person, telephone number, project description, length of business relationship, and background of services provided by Proposer.

- 3.1.8 Does any relationship exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between Proposer and any employee of University? If yes, Proposer will explain.
- 3.1.9 Proposer will provide the name and Social Security Number for each person having at least 25% ownership interest in Proposer. This disclosure is mandatory pursuant to [§231.006, Family Code](#), and will be used for the purpose of determining whether an owner of Proposer with an ownership interest of at least 25% is more than 30 days delinquent in paying child support. Further disclosure of this information is governed by the *Texas Public Information Act* (ref. [Chapter 552, Government Code](#)), and other applicable law.

3.2 Approach to Project Services

- 3.2.1 Proposer will provide a statement of the Proposer's service approach and will describe any unique benefits to University from doing business with Proposer. Proposer will briefly describe its approach for each of the required services identified in **Section 5.4** Scope of Work of this RFP.
- 3.2.2 Proposer will provide an estimate of the earliest starting date for services following execution of the Agreement.
- 3.2.3 Proposer will submit a work plan with key dates and milestones. The work plan should include:
- 3.2.3.1 Identification of tasks to be performed;
 - 3.2.3.2 Time frames to perform the identified tasks;
 - 3.2.3.3 Project management methodology;
 - 3.2.3.4 Implementation strategy; and
 - 3.2.3.5 The expected time frame in which the services would be implemented.
- 3.2.4 Proposer will describe the types of reports or other written documents Proposer will provide (if any) and the frequency of reporting, if more frequent than required in this RFP. Proposer will include samples of reports and documents if appropriate.

3.3 General Requirements

- 3.3.1 Proposer will provide summary resumes for its proposed key personnel who will be providing services under the Agreement with University, including their specific experiences with similar service projects, and number of years of employment with Proposer.
- 3.3.2 Proposer will describe any difficulties it anticipates in performing its duties under the Agreement with University and how Proposer plans to manage these difficulties. Proposer will describe the assistance it will require from University.

3.4 Service Support

Proposer will describe its service support philosophy, how it is implemented, and how Proposer measures its success in maintaining this philosophy.

3.5 Quality Assurance

Proposer will describe its quality assurance program, its quality requirements, and how they are measured.

3.6 Miscellaneous

- 3.6.1 Proposer will provide a list of any additional services or benefits not otherwise identified in this RFP that Proposer would propose to provide to University. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.2 Proposer will provide details describing any unique or special services or benefits offered or advantages to be gained by University from doing business with Proposer. Additional services or benefits must be directly related to the goods and services solicited under this RFP.
- 3.6.3 Does Proposer have a contingency plan or disaster recovery plan in the event of a disaster? If so, then Proposer will provide a copy of the plan.

SECTION 4

ADDENDA CHECKLIST

Proposal of: _____
(Proposer Company Name)

To: The University of Texas System

Ref.: Secure Testing and Proctoring Services

RFP No.: 720-1918

Ladies and Gentlemen:

The undersigned Proposer hereby acknowledges receipt of the following Addenda to the captioned RFP (initial if applicable).

Note: If there was only one (1) Addendum, initial just the first blank after No. 1, not all five (5) blanks below.

No. 1 _____ No. 2 _____ No. 3 _____ No. 4 _____ No. 5 _____

Respectfully submitted,

Proposer: _____

By: _____
(Authorized Signature for Proposer)

Name: _____

Title: _____

Date: _____

APPENDIX TWO
SAMPLE TERMS AND CONDITIONS
(INCLUDED AS SEPARATE ATTACHMENT)

APPENDIX THREE

ACCESS BY INDIVIDUALS WITH DISABILITIES

Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements set forth in [1 TAC Chapter 213](#), and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Government Code](#).) To the extent Contractor becomes aware that EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to University, either (1) perform all necessary remediation to make EIRs satisfy the EIR Accessibility Warranty or (2) replace EIRs with new EIRs that satisfy the EIR Accessibility Warranty. If Contractor fails or is unable to do so, University may terminate this Agreement and, within thirty (30) days after termination, Contractor will refund to University all amounts University paid under this Agreement.

APPENDIX FOUR
HIGHER EDUCATION VENDOR ASSESSMENT TOOL (HECVAT)
(INCLUDED AS SEPARATE ATTACHMENT)

APPENDIX FIVE

**CERTIFICATE OF INTERESTED PARTIES
(Texas Ethics Commission Form 1295)**

This is a sample Texas Ethics Commission's FORM 1295 – CERTIFICATE OF INTERESTED PARTIES. If not exempt under [Section 2252.908\(c\), Government Code](http://www.ethics.state.tx.us/whatsnew/GovernmentCode), Contractor must use the Texas Ethics Commission electronic filing web page (at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html) to complete the most current Certificate of Interested Parties form and submit the form as instructed to the Texas Ethics Commission and University. **The Certificate of Interested Parties will be submitted only by Contractor to University with the signed Agreement.**

CERTIFICATE OF INTERESTED PARTIES		FORM 1295	
Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.		OFFICE USE ONLY	
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.			
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.			
3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.			
4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary
5 Check only if there is NO Interested Party. <input type="checkbox"/>			
6 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.			
_____ Signature of authorized agent of contracting business entity			
AFFIX NOTARY STAMP / SEAL ABOVE			
Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20____, to certify which, witness my hand and seal of office.			
_____ Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath			
ADD ADDITIONAL PAGES AS NECESSARY			

TERMS AND CONDITIONS

1. Payment.

University will pay Contractor for the performance of Services in accordance with **Exhibit C**, Payment for Services, beginning at the time each institution implements and launches the Services. The Parties acknowledge and agree that no fee shall be due from University until it begins participation in the Services under this Agreement.

The Contract Amount includes all applicable federal, state or local sales or use taxes payable as a result of the execution or performance of this Agreement.

This agreement is not valid or effective for amounts in excess of \$1,000,000 without the approval of The University of Texas System Board of Regents and Contractor's appropriate completion and submission of Texas Ethics Commission Form 1295.

Fees are due and payable as per the terms of this Agreement in compliance with **Exhibit B**, Order Form.

Section 51.012, Texas Education Code, authorizes University to make payments through electronic funds transfer methods. Contractor agrees to accept payments from University through those methods, including the automated clearing house system (ACH). Contractor agrees to provide Contractor's banking information to University and each Participating Institution in writing on Contractor letterhead signed by an authorized representative of Contractor. Prior to the first payment, University and each Participating Institution will confirm Contractor's banking information. Changes to Contractor's bank information must be communicated to University and each Participating Institution in accordance with Section 12.14 in writing at least thirty (30) days before the effective date of the change and must include an IRS Form W-9 signed by an authorized representative of Contractor.

2. **[finalize when Contractor is selected] Prompt Payment Discount.** Notwithstanding any other provision of this Agreement, University is entitled to a discount of ____% (**Prompt Payment Discount**) off of each payment that University submits within ____ days after University's receipt of Contractor's invoice for that payment.

3. **Tax Exemption.** University (a State agency) is exempt from Texas Sales & Use Tax on Work in accordance with [§151.309, Texas Tax Code](#) and [34 Texas Administrative Code \(TAC\) §3.322](#). Pursuant to [34 TAC §§3.322\(c\)\(4\)](#) and (g)(3), this Agreement is sufficient proof of University's tax exempt status and University is not required to provide further evidence of its exempt status.

4. Contractor's Obligations.

4.1 Contractor will perform Work in compliance with (a) all federal, state or local, laws, statutes, regulations and ordinances (collectively, **Applicable Laws**), and (b) the Board of Regents of The University of Texas System *Rules and Regulations* (<http://www.utsystem.edu/offices/board-regents/regents-rules-and-regulations>) the policies of The University of Texas System (<http://www.utsystem.edu/board-of-regents/policy-library>); and the applicable institutional rules, regulations and policies of University (collectively, **University Rules**). Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, [Chapter 15, Texas Business and Commerce Code](#), or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.

4.2 Contractor represents and warrants that (a) it will use commercially reasonable efforts to perform Work in a good and workmanlike manner and in accordance with commercially reasonable standards of Contractor's profession or business, and (b) all Work to be performed will be of the quality that prevails among similar businesses engaged in providing similar services in major United States urban areas under the same or similar circumstances

4.3 Contractor will call to University's attention in writing all information in any materials supplied to Contractor (by University or any other party) that Contractor regards as unsuitable, improper or inaccurate in connection with the purposes for which the material is furnished.

- 4.4 University at all times is relying on Contractor's skill and knowledge in performing Work. Contractor represents and warrants that Work will be accurate and free from any material defects. Contractor's duties and obligations under this Agreement will not be in any way diminished by reason of any approval by University. Contractor will not be released from any liability by reason of any approval by University.
- 4.5 Contractor will, at its own cost, correct all material defects in Work as soon as practical after Contractor becomes aware of the defects. If Contractor fails to correct material defects in Work within a reasonable time, then University may correct the defective Work at Contractor's expense. This remedy is in addition to, and not in substitution for, any other remedy for defective Work that University may have at law or in equity.
- 4.6 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will assign to the Project a designated representative who will be responsible for administration and coordination of Work.
- 4.7 Contractor represents and warrants it is duly organized, validly existing and in good standing under the laws of the state of its organization; it is duly authorized and in good standing to conduct business in the State of Texas; it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 4.8 Contractor represents and warrants that: (i) Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor (for the benefit of University and Requesting Institution); (ii) University will receive free, good and clear title to all Work Material developed under this Agreement; (iii) Work Material and the intellectual property rights protecting Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges and other restrictions; (iv) Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of Work Material will not violate the rights of any third parties in Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.
5. **Texas Family Code Child Support Certification.** Pursuant to [§231.006, Texas Family Code](#), Contractor certifies it is not ineligible to receive the award of or payments under this Agreement, and acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
6. **Tax Certification.** If Contractor is a taxable entity as defined by [Chapter 171, Texas Tax Code](#), then Contractor certifies it is not currently delinquent in the payment of any taxes due under Chapter 171, Contractor is exempt from the payment of those taxes, or Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
7. **Payment of Debt or Delinquency to the State.** Pursuant to [§§2107.008 and 2252.903, Texas Government Code](#), Contractor agrees any payments owing to Contractor under this Agreement may be applied directly toward any debt or delinquency Contractor owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until paid in full.
8. **Loss of Funding.** Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (**Legislature**) and/or allocation of funds by the Board of Regents of The University of Texas System (**Board**). If Legislature fails to appropriate or allot necessary funds, or Board fails to allocate necessary funds, then University will issue written notice to Contractor and University may terminate this Agreement without further duty or obligation. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond University's control.
9. **Notices.** Except as otherwise provided by this Section, notices, consents, approvals, demands, requests or other communications required or permitted under this Agreement, will be in writing and sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is provided below), or email (to the extent an email address is provided below) as indicated below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is provided below) or email (to the extent an email address is provided below), when received:

If to University: _____

Fax: _____
Email: _____
Attention: _____

with copy to: _____

Fax: _____
Email: _____
Attention: _____

If to Contractor: _____

Fax: _____
Email: _____
Attention: _____

or other person or address as may be given in writing by either party to the other in accordance with this Section.

Notwithstanding any other requirements for notices given by a party under this Agreement, if Contractor intends to deliver written notice to University pursuant to [§2251.054, Texas Government Code](#), then Contractor will send that notice to University as follows:

Fax: _____
Email: _____
Attention: _____

with copy to: _____

Fax: _____
Email: _____
Attention: _____

or other person or address as may be given in writing by University to Contractor in accordance with this Section.

10. State Auditor's Office. Contractor understands acceptance of funds under this Agreement constitutes acceptance of authority of the Texas State Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds (ref. §§[51.9335\(c\)](#), [73.115\(c\)](#) and [74.008\(c\)](#), *Texas Education Code*). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

11. Venue; Governing Law. Travis County, Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

12. Breach of Contract Claims.

To the extent that [Chapter 2260, Texas Government Code](#), as it may be amended from time to time (**Chapter 2260**), is applicable to this Agreement and is not preempted by other Applicable Laws, the dispute resolution process provided for in [Chapter 2260](#) will be used, as further described herein, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

- 12.1. Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in [subchapter B](#) of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by [subchapter B](#) of Chapter 2260, to University in accordance with the notice provisions in this Agreement. Contractor's notice will specifically state that the provisions of [subchapter B](#) of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that University allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the damages. Compliance by Contractor with [subchapter B](#) of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under [subchapter C](#) of Chapter 2260. The chief business officer of University, or another officer of University as may be designated from time to time by University by written notice to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.
- 12.2. If the parties are unable to resolve their disputes under **Section 12.1** the contested case process provided in [subchapter C](#) of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of this Agreement by University.
- 12.3. Compliance with the contested case process provided in [subchapter C](#) of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under [Chapter 107, Texas Civil Practices and Remedies Code](#). The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.
- 12.4. The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to [Chapter 2260](#), as currently effective, thereafter enacted or subsequently amended.
- 12.5. University and Contractor agree that any periods provided in this Agreement for notice and cure of defaults are not waived.
- 13. Records.** Records of Contractor's costs, reimbursable expenses pertaining to the Work and payments will be available to University and Requesting Institution or its authorized representative during business hours and will be retained for four (4) years after final payment or abandonment of the Work, unless University and Requesting Institution otherwise instructs Contractor in writing.
- 14. Insurance.**
- 14.1. Contractor, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the [Texas Insurance Code](#), having an A.M. Best Rating of A-VII or better, and in amounts not less than the following minimum limits of coverage:
- 14.1.1 Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:
- | | |
|-------------------------------------|-------------|
| Employers Liability - Each Accident | \$1,000,000 |
| Employers Liability - Each Employee | \$1,000,000 |
| Employers Liability - Policy Limit | \$1,000,000 |
- Workers' Compensation policy must include under Item 3.A. of the information page of the Workers' Compensation policy the state in which Work is to be performed for University.
- 14.1.2 Commercial General Liability Insurance with limits of not less than:
- | | |
|-------------------------------|-------------|
| Each Occurrence Limit | \$1,000,000 |
| Damage to Rented Premises | \$ 300,000 |
| Personal & Advertising Injury | \$1,000,000 |
| General Aggregate | \$2,000,000 |

Products - Completed Operations Aggregate \$2,000,000

The required Commercial General Liability policy will be issued on a form that insures Contractor's and subcontractor's liability for bodily injury (including death), property damage, personal, and advertising injury assumed under the terms of this Agreement.

14.1.4 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000. The Umbrella/Excess Liability policy will be excess over and at least as broad as the underlying coverage as required under **Sections 14.1.1** Employer's Liability; **14.1.2** Commercial General Liability.

14.1.6 Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$3,000,000 aggregate. Such insurance will cover all Work performed by or on behalf of Contractor 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, Contractor agrees to purchase an *Extended Reporting Period Endorsement*, effective twenty-four (24) months 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 twenty-four (24) months after the expiration or termination of this Agreement for any reason.

14.1.9 Cyber Liability Insurance with limits of not less than \$20,000,000 for each wrongful act. This policy must cover:

- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
- Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
- Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
- Liability for technological products and services;
- PCI fines, fees, penalties and assessments;
- Cyber extortion payment and response costs;
- First and Third Party Business Interruption Loss resulting from a network security failure;
- Liability for technological products and services;
- Costs of restoring, updating or replacing data; and
- Liability losses connected to network security, privacy, and media liability.

If this policy is written on a claims-made basis, (a) the "retroactive date" must be prior to the commencement of work under this Agreement; and (b) if this policy is cancelled, terminated or non-renewed at any time during the Term, Contractor will purchase an "extended reporting period" for at least a period of two (2) years beyond the termination or expiration of the Term.

Contractor's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

14.2 Contractor will deliver to University:

14.2.1 After the execution and delivery of this Agreement and prior to the performance of any Work by Contractor, evidence of insurance on a Texas Department of Insurance (**TDI**) approved certificate form (the Acord form is a TDI-approved form) verifying the existence and actual limits of all required insurance policies; and, if the coverage period shown on the current certificate form ends during the Term, then prior to the end of the coverage period, a new certificate form verifying the continued existence of all required insurance policies.

- 14.2.1.1 **All insurance policies** (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System and University as Additional Insureds for liability caused in whole or in part by Contractor's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by Contractor. Commercial General Liability Additional Insured *endorsement* including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be *endorsed* to provide primary and non-contributory coverage.
- 14.2.1.2 Contractor hereby waives all rights of subrogation against the Board of Regents of The University of Texas System and University. **All insurance policies** will be *endorsed* to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System and University. No policy will be canceled until after thirty (30) days' unconditional written notice to University. **All insurance policies** will be *endorsed* to require the insurance carrier providing coverage to send notice to University thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this **Section 14**.
- 14.2.1.3 Contractor will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by University prior to the performance of any Work by Contractor under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
- 14.2.1.4 Certificates of Insurance and *Additional Insured Endorsements* as required by this Agreement will be mailed, faxed, or emailed to the following University contact:

Name:
Address:
Facsimile Number:
Email Address:

- 14.3 Contractor's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by University. Contractor's or subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by University in writing

15. **Indemnification.**

- 15.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY, THE UNIVERSITY OF TEXAS SYSTEM, REQUESTING INSTITUTIONS AND RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, **INDEMNITEES**) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY, **CLAIMS**) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

- 15.2 IN ADDITION, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR, OR THE USE BY INDEMNITEES, AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UNIVERSITY WILL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
16. **Ethics Matters; No Financial Interest.** Contractor and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy at <http://www.utsystem.edu/board-of-regents/policy-library/policies/int180-conflicts-interest-conflicts-commitment-and-outside->, University's Standards of Conduct Guide at : <https://www.utsystem.edu/documents/docs/policies-rules/ut-system-administration-standards-conduct-guide>, and applicable state ethics laws and rules at <https://www.utsystem.edu/offices/systemwide-compliance/ethics>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy, University's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- Further, Contractor agrees to comply with [§2252.908, Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and [1 TAC §§46.1 through 46.5 \(Disclosure of Interested Parties Regulations\)](#), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and University with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html.
17. **Undocumented Workers.** The *Immigration and Nationality Act (8 USC §1324a) (Immigration Act)* makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the [Form I-9 Employment Eligibility Verification Form \(I-9 Form\)](#) as the document to be used for employment eligibility verification ([8 CFR §274a](#)). Among other things, Contractor is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. If Contractor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement in accordance with **Section 24**. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.
18. **Force Majeure.** Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (**force majeure occurrence**). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that University may continue to provide Services during the occurrence.
19. **Entire Agreement; Modifications.** This Agreement (including all exhibits, schedules, supplements and other attachments (collectively, **Exhibits**)) supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire agreement and understanding between the parties with respect to its subject matter. This Agreement and each of its provisions will be binding upon the parties, and may not be waived, modified, amended or altered, except by a writing signed by University and Contractor. All Exhibits are attached to this Agreement and incorporated for all purposes.
20. **Captions.** The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

21. **Waivers.** No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

22. **Ownership and Use of Work Material.**

22.1 All tools, software, programs, drawings, specifications, plans, computations, sketches, data, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any subcontractors in connection with Work (collectively, **Work Material**), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re-use at any time without further compensation and without any restrictions.

22.2 Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to Work Material.

22.3 Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use Work Material for the completion of Work or otherwise. University may, at all times, retain the originals of Work Material. Work Material will not be used by any person other than University on other projects unless expressly authorized by University in writing.

22.4 Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.

22.5 Contractor IP is the sole property of Contractor (or its licensor) and Contractor (or its licensor) will at all times retain sole and exclusive title to and ownership of Contractor IP. Contractor grants University a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to use Contractor IP in connection with the Work and Contractor's services related to the Work. "**Contractor IP**" means all tools, software and programs owned by Contractor (licensed to Contractor by a third party licensor) that (1) existed prior to the Effective Date and the commencement of the Work; (2) are not related to the Work or to Contractor's services in connection with the Work; or (3) were created by Contractor (or its licensor) totally separate from the Work or Contractor's services in connection with the Work.

22.6 University grants Contractor a non-exclusive, worldwide, perpetual, irrevocable, sub-licensable, royalty-free license to the Work Product Improvements to Contractor IP. "**Work Product Improvements to Contractor IP**" means Work Material comprising an improvement, enhancement or modification to Contractor IP, whether or not patentable, copyrightable as a derivative work, or otherwise protectable as intellectual property.

23. **Confidentiality and Safeguarding of University Records; Press Releases; Public Information.** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, **University Records**). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws. Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to the Family Educational Rights and Privacy Act, [20 United States Code \(USC\) §1232g \(FERPA\)](#), are addressed in **Section 45**. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to reasonable administrative, physical and technical standards (such as standards established by the National Institute of Standards and Technology and the Center for Internet Security that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all Applicable Laws and the terms of this Agreement; and (4) comply with University Rules regarding access to and use of University's computer systems, including UTS165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records.

- 23.1 **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.
- 23.2 **Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor's intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.
- 23.3 **Disclosure.** If Contractor discloses any University Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this **Section 23.3**.
- 23.4 **Press Releases.** Except when defined as part of Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of University.
- 23.5 **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act (TPIA)*, [Chapter 552, Texas Government Code](#). In accordance with §§[552.002](#) and [2252.907](#), *Texas Government Code*, and at no additional charge to University, Contractor will make any information created or exchanged with University pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by University that is accessible by the public.
- 23.6 **Termination.** In addition to any other termination rights in this Agreement and any other rights at law or equity, if University reasonably determines that Contractor has breached any of the restrictions or obligations in this Section, University may immediately terminate this Agreement without notice or opportunity to cure.
- 23.7 **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

24. Default and Termination

- 24.1 In the event of a material failure by a party to this Agreement to perform in accordance with its terms (**default**), the other party may terminate this Agreement upon fifteen (15) days' written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the fifteen-day (15-day) period.
- 24.2 University may, without cause, terminate this Agreement at any time upon giving seven (7) days' advance written notice to Contractor. Upon termination pursuant to this Section, Contractor will be entitled to payment of an amount that will compensate Contractor for Work satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, Contractor has delivered all Work Material to University. Notwithstanding any provision in this Agreement to the contrary, University will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice, that could have been avoided or mitigated by Contractor.
- 24.3 Termination under **Sections 24.1** or **24.2** will not relieve Contractor from liability for any default or breach under this Agreement or any other act or omission of Contractor.

- 24.4 If Contractor fails to cure any default within fifteen (15) days after receiving written notice of the default, University will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to Contractor under this Agreement, any and all reasonable expenses incurred in connection with University's curative actions.
- 24.5 In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse University for all fees paid by University to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that University did not receive from Contractor prior to termination.
25. **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
26. **Severability.** In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.
27. **Limitation of Liability.** EXCEPT FOR UNIVERSITY'S OBLIGATION (IF ANY) TO PAY CONTRACTOR CERTAIN FEES AND EXPENSES UNIVERSITY WILL HAVE NO LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. NOTWITHSTANDING ANY DUTY OR OBLIGATION OF UNIVERSITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR, NO PRESENT OR FUTURE AFFILIATED ENTERPRISE, SUBCONTRACTOR, AGENT, OFFICER, DIRECTOR, EMPLOYEE, REPRESENTATIVE, ATTORNEY OR REGENT OF UNIVERSITY, OR THE UNIVERSITY OF TEXAS SYSTEM, OR ANYONE CLAIMING UNDER UNIVERSITY HAS OR WILL HAVE ANY PERSONAL LIABILITY TO CONTRACTOR OR TO ANYONE CLAIMING THROUGH OR UNDER CONTRACTOR BY REASON OF THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT.
28. **INTENTIONALLY OMMITTED.**
29. **Responsibility for Individuals Performing Work; Criminal Background Checks.** Each individual who is assigned to perform Work under this Agreement will be an employee of Contractor or an employee of a subcontractor engaged by Contractor. Contractor is responsible for the performance of all individuals performing Work under this Agreement. Prior to commencing Work, Contractor will (1) provide University with a list (**List**) of all individuals who may be assigned to perform Work on University's premises and (2) have an appropriate criminal background screening performed on all the individuals on the List. Contractor will determine on a case-by-case basis whether each individual assigned to perform Work is qualified to provide the services. Contractor will not knowingly assign any individual to provide services on University's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses. Contractor will update the List each time there is a change in the individuals assigned to perform Work on University's premises.
- Prior to commencing performance of Work under this Agreement, Contractor will provide University a letter signed by an authorized representative of Contractor certifying compliance with this Section. Contractor will provide University an updated certification letter each time there is a change in the individuals on the List.
30. **Limitations.** THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS (**LIMITATIONS**) ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
31. **Survival of Provisions.** No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination.

32. **Relationship of the Parties.** For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of University. Contractor will not bind nor attempt to bind University to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.
33. **External Terms.** This Agreement completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Contractor's performance or provision of goods or services under this Agreement (**External Terms**). External Terms are null and void and will have no effect under this Agreement, even if University or its employees, contractors, or agents express assent or agreement to External Terms. External Terms include any shrinkwrap, clickwrap, browsewrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that University or its employees, contractors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Contractor.
34. **FERPA Compliance.** Some of the University Records Contractor receives, creates or maintains for or on behalf of University constitute **Education Records** (as defined by [FERPA](#)), or **Personally Identifiable Information from Education Records** (as defined by [FERPA](#)) (collectively, **FERPA Data**). Before Contractor may access, create or maintain any of University's FERPA Data, Contractor must execute **EXHIBIT E**, FERPA Confidentiality and Security Addendum. **EXHIBIT E**, FERPA Confidentiality and Security Addendum, contains terms required by University to ensure that Contractor complies with FERPA (including the requirements of [34 CFR §99.33\(a\)](#)) and University Rules related to FERPA, including (i) a description of all FERPA Data subject to this Agreement, and (ii) recognition that University retains the right to control Contractor's access, use, and disclosure of all FERPA Data. Except to the extent **Section 22** conflicts with **EXHIBIT E**, FERPA Confidentiality and Security Addendum, Contractor will comply with **Section 22** in connection with all FERPA Data. To the extent that **EXHIBIT E**, FERPA Confidentiality and Security Addendum, conflicts with any term contained in this Agreement, the terms of **EXHIBIT E**, FERPA Confidentiality and Security Addendum, will control.
35. **General Data Protection Regulation (GDPR) Applicability.** Some of the University Records Contractor receives, creates or maintains for or on behalf of University constitute **Personal Information or Data** (as defined by the GDPR). Before Contractor may access, create or maintain such Data, Contractor must execute **EXHIBIT D**, GDPR Data Protection Addendum. Except as otherwise provided by the GDPR Data Protection Addendum included as **EXHIBIT D** Contractor agrees to provide University with a copy of the Contractor's GDPR privacy notice which complies with GDPR requirements, including but not limited to detailing the gathering and use of data, an individual's rights under GDPR, and breach notification information. Contractor will provide University with any information necessary to allow University to fulfill its responsibilities as a data controller, as that term is defined by the GDPR, when responding to an inquiry from a data subject, as that term is defined by the GDPR. Such information shall be provided to University no later than 5 days from the day Contractor or University learn of a request for information from a data subject. Except to the extent **Section 35** conflicts with **EXHIBIT D**, GDPR Data Protection Addendum, Contractor will comply with **Section 35** in connection with all Data subject to GDPR.
36. **Payment Card Industry Standards.** University is required to validate compliance on a periodic basis with applicable Payment Card Industry Data Security Standards (**PCI DSS**), including Payment Application Data Security Standards (**PA DSS**), promulgated by the Payment Card Industry Security Standards Council (**PCI SSC**). The compliance validation process requires University to undergo an assessment of (1) system components used to process, store or transmit cardholder data, and any other components that reside on the same network segment as those system components, as well as (2) related processes used to process, store or transmit cardholder data, (System Components in Scope). Some or all System Components in Scope have been outsourced to Contractor under this Agreement. Contractor will cause its agents and subcontractors to comply with all terms of this Section applicable to Contractor. Contractor will achieve and maintain compliance under the current versions of PCI DSS and PA DSS published on the PCI SSC website for service providers and payment applications. Contractor will provide to University (1) on or before the date this Agreement is signed by University, and (2) within ten (10) days after each anniversary of the date this Agreement is signed by University, a copy of Contractor's annual attestation of compliance signed by a Qualified Security Assessor (**QSA**) as described on the PCI SSC website.

If Contractor is unable to provide the required attestations of compliance, Contractor will permit University or University's QSA to assess all System Components in Scope that are hosted or managed by Contractor or by Contractor's agents or subcontractors. Contractor will create and maintain reasonably detailed, complete and accurate documentation describing the systems, processes, network segments, security controls, and

dataflow used to receive, transmit, store and secure cardholder data. The documentation will conform to the most current version of PCI DSS. Contractor will, upon written request by University, make the documentation and the individuals responsible for implementing, maintaining and monitoring System Components in Scope available to (1) QSAs, forensic investigators, consultants and attorneys retained by University to facilitate the validation of University's PCI DSS compliance, and (2) University's information technology, information security, audit, compliance and other staff.

Contractor will retain the documentation for at least one (1) year after termination of this Agreement.

37. **Enforcement.** Contractor agrees and acknowledges that University is entering into this Agreement in reliance on Contractor's special and unique knowledge and abilities with respect to performing Work. Contractor's services provide a peculiar value to University. University cannot be reasonably or adequately compensated in damages for the loss of Contractor's services. Accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions of this Agreement will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that University will be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.
38. **Access by Individuals with Disabilities.** Contractor represents and warrants (**EIR Accessibility Warranty**) the electronic and information resources and all associated information, documentation, and support Contractor provides to University under this Agreement (**EIRs**) comply with applicable requirements in [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#)). To the extent Contractor becomes aware the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants it will, at no cost to University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor fails or is unable to do so, then Contractor will refund to University all amounts University has paid under this Agreement within thirty (30) days after University's written request. This Section will survive the termination or expiration of this Agreement.
39. **Contractor Certification regarding Boycotting Israel.** Pursuant to [Chapter 2270, Texas Government Code](#), Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
40. **Contractor Certification regarding Business with Certain Countries and Organizations.** Pursuant to [Subchapter F, Chapter 2252, Texas Government Code](#), Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
41. **Websites and Mobile Applications.** As required by [Section 2054.517, Texas Government Code](#), before deploying any website or mobile application included as part of the Work, Contractor must submit to the University's information security officer the information required under policies adopted by the University to protect the privacy of individuals by preserving the confidentiality of information processed by the website or application. At a minimum, the information submitted by Contractor must describe:
- (1) the architecture of the website or application;
 - (2) the authentication mechanism for the website or application; and
 - (3) the administrator level access to data included in the website or application.

Additionally, Contractor will provide all assistance and cooperation necessary for University to subject the website or mobile application to a vulnerability and penetration test conducted internally by University or by an independent third party, as required by [Section 2054.517, Texas Government Code](#).

Attached:

EXHIBIT A – Scope of Work

EXHIBIT B – Sample Order Form

EXHIBIT C – Payment for Services

EXHIBIT D – GDPR DATA PROTECTION ADDENDUM

EXHIBIT E – FERPA CONFIDENTIALITY AND SECURITY ADDENDUM

EXHIBIT A

SCOPE OF WORK

EXHIBIT B

SAMPLE ORDER FORM

EXHIBIT C

PAYMENT FOR SERVICES

EXHIBIT D

GDPR DATA PROTECTION ADDENDUM

This GDPR Data Protection Addendum (“**Addendum**”) is made and entered into effective as of [] (the “**Effective Date**”) by and between **The University of Texas System**, a state agency and institution of higher education established under the laws of the State of Texas (“**University**”) and [] (“**Contractor**”), (collectively, “**Parties**”). The purpose of this Addendum is to provide the terms related to privacy, confidentiality, and security which Contractor is required to adhere to, under applicable data privacy laws and regulations, in order to process, handle, and store Personal Information on behalf of University as set forth in the **Standard Agreement** (“**Underlying Agreement**”).

1. Definitions

- (a) “GDPR” means the European Union (EU) General Data Protection Regulation, EU 2016/679 of the European Parliament and of the Council.
- (b) “Personal Data” means any and all data obtained directly from an individual or included in University Records (regardless of format) that (i) identifies or can be used to identify, contact or locate a natural person, or (ii) pertains in any way to an identified natural person. Personal Data includes identifiers such as names, addresses, email addresses, phone numbers and identification numbers as well as “personal data” as defined in the GDPR, Article 4.
- (c) “Privacy Laws” means all applicable U.S. and international laws that regulate the Processing of Personal Data. In particular, includes the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Family Educational Rights and Privacy Act (FERPA), the Identify Theft Enforcement and Protection Act (ITEPA), the GDPR and other applicable laws that specify privacy, security or security breach notification obligations that affect the Personal Data or the provision of the services by Contractor.
- (d) “Process” or “Processing” means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, compilation, use, disclosure, duplication, organization, storage, alteration, transfer, transmission, combination, redaction, erasure, or destruction.
- (e) “Security Breach” means a “personal data breach” (as defined in the GDPR, Article 4), a “breach of the security of a system” or similar term (as defined in any other applicable Privacy Law) or any other event that compromises the security, confidentiality or integrity of Personal Data.
- (f) “Sensitive Personal Information” is a subset of Personal Data, which due to its nature has been classified by law or by University policy as deserving additional privacy and security protections. Sensitive Personal Information consists of: (i) all government-issued identification numbers, (ii) all financial account numbers (including payment card information and health insurance numbers), (iii) individual medical records, genetic and biometric information, (iv) all data obtained from a U.S. consumer reporting agency, (v) user account credentials, such as usernames, passwords, security questions/answers and other password recovery data, (v) data elements that constitute “Special Categories of Data”, as provided by Article 9 under the GDPR, namely “Personal Data” revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation.
- (g) “Services” means any and all services that University requests the Contractor to perform under the Underlying Agreement.
- (h) “Subprocessor” means any third party (including Contractor’s affiliates, agents, and subcontractors) that provides any services to Contractor and that may have access (including inadvertent access) to any Personal Information.
- (i) “Transfer” means to disclose or otherwise make the Personal Information available to a third party (including to any affiliate or Subprocessor of Contractor), either by physical movement of Personal Data to such third party or by enabling access to Personal Data by other means.

2. Contractor Obligations

- (a) Contractor will only Process or Transfer Personal Information as authorized by University and as necessary to perform the Services detailed in the Underlying Agreement.
- (b) Contractor will promptly inform University in writing:
 - (i) if it is not in compliance with or cannot comply with any material term of this Addendum or of the Underlying Agreement, including any such term regarding the Services. In addition to any other rights of the University under this Addendum, the Underlying Agreement, or applicable law or regulation, in the event of such notice University at its sole discretion may (1) permit Contractor to use reasonable efforts to remedy any such non-compliance or (2) terminate Contractor's further Processing of Personal Information under this Addendum and the Underlying Agreement;
 - (ii) of any request for access to any Personal Information received from an individual who is (or claims to be) the subject of the data;
 - (iii) of any request for access to any Personal Information received by Contractor from any government agency, entity, or official (including any data protection agency or law enforcement agency);
 - (iv) of any other requests with respect to Personal Information received from University or other third parties, other than those set forth in the Underlying Agreement. Contractor understands that it is not authorized to and will not respond to the requests identified in items (ii), (iii), and (iv) above, unless Contractor is (1) explicitly authorized by University or (2) the response is legally required under a subpoena or similar legal document issued by a government agency, entity, or official that compels disclosure by Contractor.
- (c) If Services involve Contractor's collection of Personal Information directly from individuals, Contractor will provide the individuals with a clear and conspicuous written privacy notice, which notice will be reviewed by University before Contractor begins providing any Services set forth in the Underlying Agreement. The notice must comply with any legal requirements for the privacy notice in the jurisdictions where it is given, be translated into the languages used in connection with Contractor's interaction with the individuals, and indicate that Contractor is processing Personal Information as a processor on behalf of University.
- (d) If the Personal Information includes "protected health information" (or "PHI") as defined in the Health Insurance Portability and Accountability Act and 45 Code of Federal Regulations (CFR) Part 160 and subparts A and E of Part 164 (collectively, "HIPAA"), then before Contractor may receive, maintain or create any Personal Information, Contractor will execute an appropriate Business Associate Agreement ("BAA") as required by HIPAA with University. To the extent that the BAA conflicts with any term contained in this Addendum or the Underlying Agreement, the terms of the BAA will control.
- (e) Subject to Section 2(b) of this Addendum, Contractor will cooperate with University and with its affiliates and representatives in responding to inquiries, incidents, claims and complaints regarding Processing of Personal Information or as otherwise needed for University to (1) demonstrate compliance with applicable Privacy Laws and (2) respect individuals' rights under those Privacy Laws.
- (f) Contractor must use reasonable efforts to stay informed of applicable legal and regulatory requirements for Processing of Personal Information. Contractor will ensure that its Processing complies with all applicable Privacy Laws, as well as Contractor's and University's privacy notices.

3. Confidentiality and Data Access

- (a) Personal Information is considered Confidential Information of University. Contractor will not use or disclose Personal Information received from or on behalf of University, its students, faculty, or staff, or any third party pursuant to the Underlying Agreement, (including any Personal Information provided by a University student directly to Contractor), except as permitted or required by the Underlying Agreement or this Addendum. If Contractor discloses any Personal Information to a Subprocessor Contractor will require the Subprocessor to comply with the same restrictions and obligations that are imposed on Contractor by the Underlying Agreement and this Addendum, including requiring each Subprocessor to agree to the same restrictions and obligations in writing.

- (b) Contractor will use the administrative, technical and physical security measures, including secure encryption in the case of electronically maintained or transmitted Personal Information, approved by University and that are at least as stringent as the requirements of UT System Information and Resource Use & Security Policy, UTS 165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>, to preserve the confidentiality and security of all Personal Information received from or on behalf of University, its students, faculty, or staff, or any third party pursuant to the Underlying Agreement.
- (c) Contractor has implemented and will maintain documented appropriate business continuity and disaster recovery plans to enable it to continue or resume providing Services in accordance with the Underlying Agreement in the event of any disaster or other adverse event affecting the University and/or Contractor.
- (d) Prior to allowing any employee, subcontractor, representative, agent, subprocessor, or other individual to process Personal Information, Contractor will (i) conduct an appropriate background check of the individual as permitted by law and in compliance with the Underlying Agreement, (ii) require the individual to execute an enforceable confidentiality agreement, and (iii) provide the individual with appropriate privacy and security training. Contractor will also continually monitor its employees, subcontractors, representatives, agents, subprocessors, or other individuals it provides or engages for compliance with the privacy and security program requirements.
- (e) Contractor, within five (5) business days after becoming aware of any successful security breach or use or disclosure of Personal Information in violation of this Agreement, will report to University as much information as Contractor has available, including but not limited to: (i) the nature of the unauthorized use or disclosure, (ii) the Personal Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure. Contractor will provide such other information, including written reports, as reasonably requested by University.
- (f) Upon request, Contractor will provide University with information about the Contractor's information security program. Contractor will also submit its data processing facilities for audit, during Contractor's reasonable business hours, which will be carried out in a mutually-agreeable manner no more than ten (10) days after such request. In the event that such audit reveals material gaps or weaknesses in Contractor's security program, University will be entitled to terminate Contractor's Processing of Personal Information, including, termination of this Addendum and the Underlying Agreement permanently, or until such issues are resolved.

4. Return of Records

Contractor agrees that no later than 30 days after expiration or termination of the Underlying Agreement or this Addendum for any reason, or within thirty (30) days after University's written request, Contractor will halt all access, use, or processing of Personal Information and will return or destroy University Records and/or Personal Information as agreed to by the Parties in the Underlying Agreement.

5. General Provisions

This Agreement is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Texas without regard to choice of law principles. To the extent that the Underlying Agreement conflicts with any term or provision contained in this Agreement, the terms of the Underlying Agreement will control.

Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to University:
The applicable U.T. Institution(s)'s Privacy/Data Protection Officer

With copy to:
The University of Texas System Privacy and Data Protection Officer
Office of Systemwide Compliance
210 West 7th Street

Austin, Texas 78701

If to Contractor: _____

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner herein above provided.

AGREED TO AND SIGNED BY THE PARTIES.

The University of

[Contractor]

By: _____

by: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT E

FERPA CONFIDENTIALITY AND SECURITY ADDENDUM

This FERPA Confidentiality and Security Addendum (**Addendum**) is made and entered into effective as of [] (**Effective Date**) by and between **The University of Texas** [], a state agency and institution of higher education established under the laws of the State of Texas (**University**) and [] (**Contractor**), (collectively, **Parties**). The purpose of this Addendum is to provide the terms under which Contractor is required to maintain the confidentiality and security of any and all University records subject to the Family Educational Rights and Privacy Act, [20 United States Code §1232g](#) (**FERPA**) which Contractor will create, receive, or maintain on behalf of University pursuant to **[Identify underlying contract to which the Addendum is attached.]**(**Underlying Agreement**).

1. **FERPA.** The Parties understand and agree that:
 - 1.1 As part of the work (**Work**) that Contractor will provide pursuant to the Underlying Agreement, Contractor is expected to create, receive or maintain, records or record systems from or on behalf of University that (a) are subject to FERPA or (b) contain personally identifiable information from "Education Records" as defined by and subject to FERPA (collectively, **FERPA Records**) namely: student image, student's first and last name, including date of birth, student identification number or other personally identifying information to validate and confirm a student's identity, exam information, including information which may lead to a component of a student's disciplinary record, including academic status within the Institution, and other sensitive information. Records include all data in any form whatsoever, including electronic, written and machine readable form.
 - 1.2 Notwithstanding any other provision of the Underlying Agreement, this Addendum or any other agreement, all FERPA Records created, received or maintained by Contractor pursuant to the Underlying Agreement will remain the sole and exclusive property of University.
2. **FERPA Compliance.** In connection with all FERPA Records that Contractor may create, receive or maintain on behalf of University pursuant to the Underlying Agreement, Contractor is designated as a University Official with a legitimate educational interest in and with respect to such FERPA Records, only to the extent to which Contractor (a) is required to create, receive or maintain FERPA Records to carry out the Underlying Agreement, and (b) understands and agrees to all of the following terms and conditions *without reservation*:
 - 2.1 **Prohibition on Unauthorized Use or Disclosure of FERPA Records.** Contractor will hold University FERPA Records in strict confidence. Contractor will not use or disclose FERPA Records received from or on behalf of University, including any FERPA Records provided by a University student directly to Contractor, except as permitted or required by the Underlying Agreement or this Addendum.
 - 2.2 **Maintenance of the Security of FERPA Records.** Contractor will use the administrative, technical and physical security measures, including secure encryption in the case of electronically maintained or transmitted FERPA Records, approved by University and that are at least as stringent as the requirements of UT System Information and Resource Use & Security Policy, UTS165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>, to preserve the confidentiality and security of all FERPA Records received from, or on behalf of University, its students or any third party pursuant to the Underlying Agreement.
 - 2.3 **Reporting of Unauthorized Disclosures or Misuse of FERPA Records and Information.** Contractor, within five (5) days after discovery, will report to University any use or disclosure of FERPA Records not authorized by this Addendum. Contractor's report will identify: (i) the nature of the unauthorized use or disclosure, (ii) the FERPA Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure. Contractor will provide such other information, including written reports, as reasonably requested by University. For purposes of this **Section 2.3**, an unauthorized disclosure or use includes any access or use of an "Education Record" (as defined by FERPA) by a Contractor employee or agent that the employee or agent does not require to perform Work or access by any employee or agent that does not involve the provision of Work.

- 2.4 **Right to Audit.** If University has a reasonable basis to believe that Contractor is not in compliance with the terms of this Addendum, University may audit Contractor's compliance with FERPA as Contractor's compliance relates to University's FERPA Records maintained by Contractor.
- 2.5 **Five Year Exclusion for Improper Disclosure of Education Records.** Under the federal regulations implementing FERPA, improper disclosure or redisclosure of personally identifiable information from University's "Education Records" (as defined by FERPA) by Contractor or its employees or agents may result in Contractor's complete exclusion from eligibility to contract with University for at least five (5) years.
3. **Return [Option: or Secure Destruction] of FERPA Records.** Contractor agrees that no later than 30 days after expiration or termination of the Underlying Agreement or this Addendum for any reason, or within thirty (30) days after University's written request, Contractor will halt all access, use, creation, or processing of FERPA Records and will return to University [Option: or Securely Destroy] all FERPA Records, including any copies created by Contractor or any subcontractor; and Contractor will certify in writing to University that all FERPA records have been returned to University [Option: or Securely Destroyed]. [Option: Secure Destruction, Securely Destroy and Securely Destroyed mean shredding, erasing or otherwise modifying a record so as to make it unreadable or indecipherable.]
4. **Disclosure.** Contractor will restrict disclosure of FERPA Records solely to those employees, subcontractors, or agents of Contractor that have a need to access the FERPA Records in order for Contractor to perform its obligations under the Underlying Agreement or this Addendum. If Contractor discloses any FERPA Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with restrictions and obligations that align with the restrictions and obligations imposed on Contractor by the Underlying Agreement and this Addendum, including requiring each subcontractor or agent to agree to the same restrictions and obligations in writing.
5. **Termination.** This Addendum will remain in effect until the earlier of (a) expiration or termination of the Underlying Agreement, or (b) the date University terminates this Addendum by giving Contractor sixty (60) days' written notice of University's intent to terminate. **Sections 2, 3, 4, and 6** of this Addendum will survive expiration or termination of the Underlying Agreement and this Addendum.
6. **Breach.** In the event of a breach, threatened breach or intended breach of this Addendum by Contractor, University (in addition to any other rights and remedies available to University at law or in equity) will be entitled to preliminary and final injunctions, enjoining and restraining such breach, threatened breach or intended breach.
7. **Governing Law.** The validity, construction, and performance of this Addendum are governed by the laws of the State of Texas, and suit may be brought in **Travis** County, Texas to enforce the terms of this Addendum.
8. **Non-Assignment.** The rights and obligations of the Parties under this Addendum may not be sold, assigned or otherwise transferred.

AGREED TO AND SIGNED BY THE PARTIES:

The University of Texas [at _____]

Contractor

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Office of Information Security
210 W. 7th Street
Austin, Texas 78701
512-499-4389
WWW.UTSYSTEM.EDU

The University of Texas System (UT System) Administration leverages the Higher Education Cloud Vendor Assessment Tool (HECVAT) Lite in evaluating third party products/services that will access, process, or host university data.

HECVAT instructions and licensing information may be found within this workbook. Additional information about the tool may be found on the Educause.edu website located here:

<https://library.educause.edu/resources/2016/10/higher-education-cloud-vendor-assessment-tool>

For UT System information security related questions, please contact either of the following:

Al Arboleda: aarboleda@utsystem.edu

Tod Maxwell: tmaxwell@utsystem.edu

[Proceed to the next tab, Instructions.](#)

ADDENDUM 1

DATE: May 5, 2020
PROJECT: Secure Testing & Proctoring Services
RFP NO: 720-1918
OWNER: The University of Texas System Administration
TO: Prospective Bidders

This Addendum forms part of Contract Documents and modifies Bid Documents dated February 19th, 2019 with amendments and additions noted below.

Questions and Answers:

1. **Question:** Does the selected vendor need to work with Windows, Mac, and Google Chrome operating systems?

Answer: Yes.

2. **Question:** Should the proctoring solution estimate all additional fees (i.e. convenience fees, rescheduling fees, etc.) into the cost proposal?

Answer: Yes.

3. **Question:** Does UT require 3rd party certification for any VPATs provided by a vendor?

Answer: At this point in the process, UT System must receive a completed VPAT. The certification by a 3-rd party vendor is not necessary. We may request this document if you are a selected vendor.

4. **Question:** Does UT require an independent 3rd party certification for vendors that are FERPA, COPPA, GDPR, ADA 508, and WCAG compliant and if so, would you like the certification included into the RFP document?

Answer: UT does not require 3rd party certification. 3rd party certification is preferred. If vendors have certification documents available, they can include it in the RFP documentation.

5. **Question:** How often must the vendor be third-party audited – verifying the standards and performance of their security model?

Answer: University reserves the right to audit vendor if there is a significant change (vendor is bought, hosting environment changes, outsource security, major platform change, poor security score card rating (D or F), external scan shows critical vulnerability in vendor environment, report of vendor environment being hacked). University may also audit vendor at the time of software renewal.

6. **Question:** Does UT require a redundancy plan for proctoring vendors that are utilizing legacy browser plugins with known security vulnerabilities (e.g, Flash)?

Answer: Vendor must provide browsing option that are secure with no known security vulnerabilities.

7. **Question:** Is there a minimum threshold for number of exams proctored by a vendor to demonstrate the scalability and expertise needed to provide proctoring services to UT? (e.g., one million exams proctored).

Answer: Yes – 2K exams per day/per university.

8. **Question:** Section 5.5.2. Has Proposer worked with University institutions in the past five (5) years?

Question: Is this referring to UT Universities specifically, or just any university institutions in the past (5) years?

Answer: This is referring to UT Institutions specifically.

9. Section 1.4

Question: Are there other Texas schools outside of the UT system that could purchase off of this contract?

Answer: There is a Group Purchasing Authority clause in this RFP that allows other Higher Education Institutions to use this RFP (not an agreement that will result from this RFP) as a procurement method.

For volume discount considerations, though, should vendors only consider the 14 schools and 230K UT students as potential proctoring users under this contract?

Answer: More UT academic institutions, than UT Health institutions will use this agreement.

10. Section 1.9.3

Question: Would it be considered that all of the schools would come on at the same time or could you provide anticipated timing of adoption?

Answers:

UT Dallas & UT Austin: It is possible that the majority of the institutions may come on at once.

UT Tyler: UT Tyler’s adoption is planned for Summer 2019.

UTPB: Schools will stagger adoption dependent on contracts with current vendors in place.

11. Section 2.3 Project management needs.

Question: Are there specific project management needs or requirements that UT envisions for this project that you could define for us?

Answers:

UT Austin: Responsive ongoing account management is needed more than project management; including providing best practices and support for piloting the system and its capabilities before roll-out, as needed, and planning for upcoming semesters.

UT Dallas: Integrating with LMS, integrating with Testing Center, establishing relationship/workflow with faculty and Dean of Students (academic integrity processes & procedures).

UT Tyler: Nothing beyond the integration and support that is already addressed in the RFP.

UTPB: PM is campus dependent.

12. Section 5.3.6.F

Question: What type of “website content” does this question refer to specifically?

Answer: Text, images, sounds, videos, and animations.

13. Section 5.4.7.F

Question: Please clarify what UT is looking for in terms of a “designated school official?”

Answer: Proctors that will receive FERPA training and be able to answer FERPA-related questions while working with Institutions.

14. Section 5.5.44 Explain how the Solution handles multiple attempts or save and return exams.

Question: Please expand on the desired business process around “multiple attempts and/or save and return exams.

Answers:

UT Austin: This refers to how the system/process/workflow supports students who have difficulty with an exam for some reason, such as a wifi problem or another glitch that deters them from continuing. Can the student re-connect and continue the exam?

How does the system or workflow support allowing the student an opportunity to continue?

UT Tyler: This is closely related to 5.4.4, in that we are asking about the ability to allow for faculty to launch exams that provide for more than one submission or exams that allow students to start and stop the exam (completing it over multiple sessions / dates).

UTPB: Faculty should have ability to set attempt option and if students have ability to save and return.

15. Section 5.5 18 Does Proposer's Solution support students in multiple languages? What languages does it support?

Question: In terms of language support is UT interested primarily in the language students are using for their exam?

Answers:

UT Austin: This refers to supporting students for whom English is a second language, who will take the exam in English.

UT Tyler: UT Tyler is interested in language support for the languages used in our exams. So, yes.

UTPB: Not required in such cases where language is the course. Should be option setting.

16. **Question:** What is your anticipated selection date?

Answer: Late March – early April 2019.

17. **Question:** What is your anticipated implementation date?

Answer: If an Institution selects to use the vendor selected through this RFP process, the Institution will work with the vendor on the timeline.

18. **Question:** Will the UT System be requiring a pilot period prior to awarding a contract?

Answer: No.

19. **Question:** Do you see internet speed/bandwidth as a significant challenge for many of your students?

Answers:

UT Austin: Possibly.

UT Dallas: No.

UT Tyler: For SOME of our students, we do. UT Tyler has a sizable number of students who access UT Tyler resources from deep in the piney woods. We have few students on

dial-up or satellite connections, but do see download speeds measured in Kbps instead of Mbps.

UTPB: In some rural cases.

20. **Question:** Can you please provide any background as to the motivation or reason for this RFP?

Answers:

UT Austin: Our institution would like to have access to preferred pricing and support, and to have access to central agreements rather than continuing to pursue agreements independently at a departmental or College level.

UT Tyler: UT Tyler intends to choose a single provider for online proctoring so that students will have a common experience when testing across courses.

21. **Question:** In the Platform Technology, Security and Functionality Section, question 12, you ask to explain if the solution can integrate with applications outside of the LMS via means other than LTI. Can you please explain the reason not using LTI in these cases? Are you asking because there is use of solutions outside the LMS that are not LTI compliant?

Answer: It is probable that there will be use of solutions outside the LMS that are not LTI compliant.

22. **Question:** Is support for mobile devices like smart phones (Android, iOS) required?

Answer:

UT Austin: This is not a requirement for our institution. We use the Canvas LMS; it does not “officially” support mobile devices.

23. **Question:** 1.2, Background and Special Circumstances “The Solution must be capable of monitoring various forms of online assessments / examinations, including multiple choice, short answer, open note and group exams as required by the instructor.” Can you elaborate on what a group exam would entail?

Answers:

UT Tyler: If an instructor utilized an assessment that allowed students to work together in the same / different locations. This may provide for multiple people in the same place, or communication between students in different locations.

UTPB: For example, engineering requires printing and completed exam file (picture/scan) uploaded for submission.

24. **Question:** 5.5 Monitoring Assessments 66. What allowances are made for student who use borrowed equipment or shared lab spaces to take exams?
Can you please clarify what is being required as a solution in these situations?

Answers:

UT Austin: How will your process support the student who does not have administrative access to his computer or cannot take the exam due to issues that cannot be resolved by the proctor? Additionally, what is your process for serving students in shared spaces and non-secured environment?

UT Dallas: The instructor lists anything that may be allowed on a student's desks for the proctor.

UT Tyler: Violating testing rules may be more difficult to distinguish in a setting in an open setting such as a lab or library (or even a shared dorm room).

UTPB: Students in these situations should not have restrictions.

25. **Question:** Please identify the "major LMS Systems" (and their versions) in which we are required to integrate (p.8).

Answers:

UT Austin: Canvas.

UT Dallas: Blackboard 9.1.130093.0.

UT Tyler: UT Tyler is interested in Canvas integration (current release).

UTPB: Canvas, Blackboard.

26. **Question:** If chosen, will you allow our team to come on-site for a presentation? If so, will you be able to disclose dates of a potential visit?

Answer: This will be decided after the agreement(s) are in place.

27. **Question:** In section 5.4.4 letter B #1 - please provide an example of the "experimental platform" available to test taker prior to the actual assessment.

Answers:

UT Austin: This refers to a "system check" that allows students to verify equipment, wifi speed, etc. in advance of the start of the exam.

UT Tyler: The intent here is to provide students with the ability to verify functionality of any hardware or software prior to the proctoring session. <https://html5test.com/> is an example of automated verification of a browser's ability to handle a specific software platform. <https://fast.com/> is an example of automated testing of bandwidth (hardware + service) function.

28. **Question:** Video proctoring is not effective on mobile devices due to camera placement and angles. Please provide an explanation of 5.4.6 letter E regarding the type of proctoring needed on a mobile device.

Answers:

UT Austin: This is not a requirement for our institution. We use the Canvas LMS; it does not officially support mobile devices.

UT Dallas: UTD does not plan to offer proctoring via mobile.

UT Tyler: Analytics demonstrate that students currently use mobile devices for course access and to complete assessments. I believe the purpose here was to determine to what level providers are serving / considering this popular method of access.

UTPB: Audio recording, maybe? Currently at UTPB we steer students away from mobile devices if proctored.

29. **Question:** Referring to 5.4.6 letter L, please give more detail as to when in the RFP process you are requesting temporary access to our software.

Answer: We would like to know if it is possible to have a temporary student/faculty access to the software to see how it works as a part of the proposals' evaluation process. Please provide credentials that allow access in your proposal.

30. **Question:** Which languages are you looking for support in? Please list the languages you need proctors to understand during a live proctored session.

Answer: Please provide a list of languages your solution supports.

31. **Question:** Can you provide a percentage of your paper-based testing?

Answers:

UT Austin: 20-25% are paper-based.

UT Dallas: 40% of exams proctored in the testing center are paper-based.

UT Tyler: UT Tyler does not have this data available. However, our consideration is primarily remote learning. As such, we do have instances (two programs) which utilize paper based exams for students testing off site. This is a small percentage.

32. **Question:** We understand cost is a significant consideration in this RFP. Would you be open to pricing options beyond a per exam basis? –

Answer: We will – however, to be able to compare pricing proposals, we need Proposer to provide the pricing in the format requested in Section 6. In addition, in this same Section Proposer may provide the alternative pricing.

33. **Question:** Will the student or the institution be paying for our services? Or, will it be up to the discretion of the specific campus?

Answers:

UT Austin: It may be up to the discretion of specific departments at our institution, although our broadest use case will be for student payment.

UT Dallas: UTD will have students pay, however the option for other campuses to pay at the institution level should be available.

UT Tyler: UT Tyler is seeking an institutional pay model.

UTPB: Campus decision based on quantity.

34. **Question:** How many physical testing centers are available to enrolled students across all University of Texas campuses?

Answers:

UT Austin: Students can access an approved testing center, or Proposers may propose a testing center for approval.

UT Dallas: UTD has a 300 seat testing center.

UT Tyler: UT Tyler provides one testing center for students with accommodations / disabilities. We do not have any testing centers open to all students.

UTPB: UTPB has a testing center, currently charges non-UTPB students for use.

35. **Question:** Who is on your decision committee?

Answer: We have several Institutions' representatives on the evaluation committee.

36. **Question:** Can you provide usage data with your current online proctoring vendor(s)? How many exams are proctoring annually? Do you have data for 2017, 2018? If using different modalities or levels of proctoring, can you provide a breakdown of the use of live proctoring vs. record & review proctoring vs. automated proctoring? Can you provide usage for live proctoring versus automated proctoring currently and projected? Can you provide expected estimates for proctored exams at UT for 2019 & 2020? Growth rates for the term of the contract?

Answer: This information will be provided to the awarded vendor(s).

37. **Question:** Will the use of the online proctoring solutions be managed centrally; or will faculty be responsible for all of the exam set up and registration, and final review?

Answers:

UT Austin: Both; will vary by department and College.

UT Dallas: Faculty/students will handle the process on their own.

UT Tyler: UT Tyler prefers to centrally manage the solution, though faculty will have the ability and responsibility to publish exams and evaluate exam security concerns.

UTPB: Faculty will control at UTPB. Central DE staff can support as needed.

38. **Question:** Do you have any data on how many of your institutions are currently using online proctoring solutions? Is there any data about the usage stats statewide for online proctoring (i.e. number of proctored exams annually across all UT institutions)?

Answers:

UT Austin: We use online proctoring solutions currently. (Unsure about the answer to the second question.)

UT Dallas: UTD is using online proctoring currently. UTD has given 509 online proctored exams via current provider from 9/1/18 – 3/1/19.

UT Tyler: Last Spring, we completed between 2500 and 2500 exams. This is a rough estimate across all providers.

UTPB: UTPB is using 2 different proctoring solutions. Not aware of statewide stats.

39. **Question:** Can you provide any guaranteed minimum of proctored exams that will be tied to this award?

Answer: No. We cannot provide guaranteed minimum of proctored exams.

40. **Question:** Will there be a need for proctored professional testing (ie. certifications and licensing, etc.)? If so, can a projected percentage of the overall proctoring need also be provided?

Answers:

UT Austin: For our institution, this use case will likely grow over time, but it is not driving the need for a proctoring solution currently.

UT Dallas: No, these will be handled in-house at UTD.

UT Tyler: Currently, UT Tyler does not plan to provide professional licensure proctoring.

UTPB: No.

41. **Question:** What percentage of your academic online proctoring needs will be exclusive to students enrolled in online learning programs?

Answer:

UT Austin: The solution is targeted primarily at admitted undergraduate and graduate students, as well as non-admitted students seeking course credit, taking credit-bearing courses that are deployed online. (1-2% of these students are enrolled in online-only learning programs currently.)

UT Dallas: I would anticipate 80% of exams would be taken by distance learning students.

UT Tyler: UT Tyler plans to use this service for online students / programs exclusively.

UTPB: Estimate 70% primarily online students. UTPB does offer use of 3rd party tools for use through LMS.

42. **Question:** Do any of your nursing programs in the system use either ATI or HESI for testing?

Answers:

UT Dallas: N/A

UT Tyler: UT Tyler Nursing uses ATI.

UTPB: Not for online classes. In-person program uses ATI with in person proctoring on campus.

43. **Question:** Can respondents submit a pre-existing VPAT document, or must it be submitted in the format provide in the RFP document?

Answer: The link in the RFP is to the standard VPAT form that all vendors should use.

END OF ADDENDUM 1