

**Information Technology Addendum**

**between Texas A&M University – Corpus Christi**

**and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Information Technology Addendum (this “Addendum”) amends and supplements the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [insert agreement title] (the “Agreement”) between **Texas A&M University – Corpus Christi**, a member of the Texas A&M University System, an agency of the State of Texas(“Customer”) and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**(“Vendor”). The parties agree as follows:

Unless otherwise defined in this Addendum, each term used in this Addendum has the meaning ascribed to it in the Agreement.

***Information Technology Clauses***

***A. Information Technology Clauses on Protected Information***

1. Ownership of Protected Information: Customer shall retain all right, title, and interest in and to Protected Information.

2. Definition of Protected Information: “Protected Information” means any and all information, data or other content that Customer or its employees, students, contractors, or agents provides to Vendor or submits to Vendor’s products or services or that Vendor collects on Customer’s behalf, including without limitation, employment records, medical records, education records (as such term is defined in FERPA (as defined below), personally identifiable information (as such term is defined in FERPA), nonpublic personal information (as such term is defined in the Gramm-Leach-Bliley Act), any information that alone or in conjunction with other information identifies an individual, personal financial records, research data, classified government information, and any other data that has been designated as private, proprietary, protected, or confidential by law or by Customer. For purposes of this Addendum, Customer’s Confidential Information shall be treated as Protected Information.

3. Vendor’s Use of Protected Information: Vendor shall hold Protected Information in confidence using the higher standard of 1) commercially reasonable care or 2) the care used by the Vendor in protecting its own information of a similar type. Vendor shall use Protected Information only for the purpose of fulfilling its obligations under the Agreement and for Customer's benefit and shall not share Protected Information with, or disclose it to, any third party without the prior written consent of Customer or as otherwise required by Applicable Law. Vendor shall not use Protected Information for Vendor's own benefit and, in particular, shall not engage in "data mining" of Protected Information or aggregate or de-identify Protected Information, except as authorized in writing by Customer.

4. Legal Notices:

a. Except as otherwise expressly prohibited by Applicable Law, Vendor will: i) immediately notify Customer of any subpoena, warrants, or other legal orders, demands, or requests, received by Vendor seeking Protected Information; ii) consult with Customer regarding its response; and iii) cooperate with Customer’s reasonable requests in connection with efforts by Customer to intervene and quash or modify the legal order, demand, or request and, unless otherwise prohibited by Applicable Law, shall provide Customer with a copy of the Vendor response, which shall include all portions relevant to Customer and all Protected Information disclosed by Vendor.

b. If Customer receives a subpoena, warrant, or other legal order, demand or request seeking Protected Information maintained by the Vendor, Customer will promptly provide a copy to Vendor. Vendor will promptly supply Customer with copies of the Protected Information required for Customer to respond and will cooperate with Customer's reasonable requests in connection with its response.

5. Vendor’s Disclosure of Protected Information: Vendor will disclose Protected Information only to its employees, subcontractors or agents who need to access the Protected Information in order for Vendor to perform its obligations under the Agreement. Vendor will require any such subcontractors or agents to comply with the same restrictions and obligations imposed on Vendor in the Agreement (including this Addendum) and will ensure that they have undergone a background screening.

6. FERPA: To the extent Vendor creates, accesses, receives, or maintains Protected Information that is subject to the Family Educational Rights and Privacy Act (“FERPA”), including without limitation, education records and personally identifiable information, Customer hereby designates Vendor as a school official with a legitimate educational interest in such Protected Information. Vendor shall comply with FERPA as to any such Protected Information.

7. Access to Agency Data: Pursuant to §2054.138, Texas Government Code, Vendor shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, the security controls available at [https://www.tamucc.edu/governance/rules-procedures/assets/support-docs/cybersecurity-control-standards.pdf](https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.tamucc.edu%2Fgovernance%2Frules-procedures%2Fassets%2Fsupport-docs%2Fcybersecurity-control-standards.pdf&data=05%7C01%7CDeborah.Zentmire%40tamucc.edu%7Ca3c5dd61e6d147ba0c5908da85211131%7C34cbfaf167a64781a9ca514eb2550b66%7C0%7C0%7C637968674321515404%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=xFnvGXZQORe%2BScbpcwPnsL2B1RQLm%2BV4s%2FaZ11rXXCg%3D&reserved=0) as may be amended from time to time (the “Security Controls”), to safeguard and preserve the confidentiality, integrity, and availability of Customer’s data. Vendor shall periodically provide Customer with evidence of its compliance with its Security Controls within thirty (30) days of Customer’s request.

8. Encryption of Protected Information: Vendor shall encrypt all Protected Information in transit and at rest.

9. Storage of Protected Information: Vendor shall store Protected Information only on devices located within the United States.

10. Breach Notification: Vendor shall, within twenty-four (24) hours of discovery, report to Customer any use or disclosure of Protected Information not authorized by the Agreement or in writing by Customer. Vendor’s report shall identify: (a) the nature of the unauthorized use or disclosure, (b) the Protected Information used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure, (d) what Vendor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action Vendor has taken or will take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, as reasonably requested by Customer.

***B. Information Technology Security and Accessibility Clauses***

Return of Customer Information by Vendor: Upon termination or expiration of the Agreement, Vendor shall cease any use of Protected Information and return all Protected Information to Customer within thirty (30) days or, if return is not feasible, destroy all Protected Information within thirty (30) days. At least ten (10) business days before destruction of any Protected Information, Vendor shall provide Customer with written notice of Vendor’s intent to destroy it. Within seven (7) days after destruction, Vendor shall confirm to Customer in writing the destruction of Protected Information. This Section shall survive the expiration or termination of the Agreement.

Cybersecurity Training: In the event that Vendor’s employees, officers, and subcontractors will have access to Customer’s computer system and/or database, Vendor’s employees, offices, and subcontractors must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* and selected by Customer. The cybersecurity training program must be completed by Vendor’s employees, officers, and subcontractors during the term of the Agreement and any renewal period. Vendor shall verify completion of the program in writing to Customer within the first thirty (30) calendar days of the term of the Agreement and any renewal period. Vendor acknowledges and agrees that its failure to comply with the requirements of this Section are grounds for Customer to terminate the Agreement for cause with immediate effect.

Audit Logging:

3.1 Vendor shall:

* 1. Ensure that the following system events are recorded to one or more audit logs in real time:
     1. All logins (including standard user, admin user, and service accounts);
     2. Account administration: account create, delete, modify permissions, change password, etc.; and
     3. Supervisor/Administrator changes to system parameters including security settings and audit logging parameters;
  2. Ensure that each audit log event shall comprise of at least the following information:
     1. Date;
     2. Time, down to resolution of at least one second;
     3. IP and/or username;
     4. Activity description; and
     5. Success or failure;
  3. Retain audit logs for at least one (1) year; and
  4. Make the audit logs available to Customer via an automated process e.g. export from an admin dashboard, syslog, sftp, Splunk forwarder, etc.

Cloud Computing Services: In the event that Vendor provides cloud computing services (as such term is defined in Section 2054.0593, *Texas Government Code*) to Customer, Vendor shall comply with the then-current requirements of the risk and authorization management program established by the Texas Department of Information Resources (“TX-RAMP”). Pursuant to Section 2054.0593, *Texas Government Code*, Vendor shall maintain TX-RAMP compliance and certification, as may be amended from time to time, throughout the term of the Agreement and any renewal term. Vendor shall provide Customer with evidence of its TX-RAMP compliance and certification within thirty (30) days of Customer’s request and at least thirty (30) days prior to the start of any renewal term of the Agreement.

Access by Individuals with Disabilities: If determined to be applicable by TAMU-CC, Vendor shall address all required technical standards (WCAG 2.0, Level AA) (the “Accessibility Standards”) by providing a Voluntary Product Accessibility Template (“VPAT”) attesting to the accessible features and capabilities of any electronic and information resources (as defined in Title 1, Chapter 213 of the Texas Administrative Code) and associated documentation and technical support (collectively, the “EIR”) or provide a similarly-formatted document as the VPAT attesting to the EIR’s accessible features and capabilities. TAMU-CC may test the EIR to ensure the accuracy of the VPAT response regarding conformance with the Accessibility Standards. If Vendor should have known, becomes aware, or is notified that the EIR do not comply with the Accessibility Standards, Vendor shall, in a timely manner and at no cost to TAMU-CC, perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, replacement, or upgrading the EIR, or providing a suitable substitute.

***C. General Information Technology Clauses***

**1. Agreement Renewal:** Notwithstanding any provision in the Agreement to the contrary, the Agreement may not be renewed except upon mutual written agreement signed by authorized representatives of Customer and Vendor. Should the parties agree to renew the Agreement, Vendor may increase its fees by no more than three (3) percent at the start of each renewal term with ninety (90) days’ prior written notice to Customer.  

2. Material Function Removal: In the event (a) Vendor removes a material function (“Function”) in any of the products or services licensed by Vendor to Customer under the Agreement (“Initial Software”) from a subsequent version or release of such Initial Software, and (b) that Function appears in another product or service Vendor makes commercially available (“Additional Software), then Customer, at Customer’s sole discretion and without forfeiting its rights to the Initial Software or to terminate the Agreement for cause and receive a refund of any pre-paid fees, shall be entitled to receive an equal quantity of licenses for the Additional Software as Customer had licenses to the Initial Software at no additional charge.

3. Sunset: Should the Vendor (a) cease further development work for or "end of life" the Initial Software, and (b) make commercially available any replacement products or services or products or services that contain substantially all of the same functionality of the Initial Software (“Replacement Software”), then Customer, at Customer’s sole discretion and without forfeiting its rights to the Initial Software or to terminate the Agreement for cause and receive a refund of any pre-paid fees, shall be entitled to receive an equal quantity of licenses for each such Replacement Software as Customer had licenses to the Initial Software at no additional charge.

**4. Representations and Warranties: Vendor represents and warrants that:**

* 1. **Vendor’s products and services will perform substantially in accordance with the accompanying written materials, including without limitation, Vendor’s documentation and marketing materials;**
  2. **Vendor has the full right, power, and authority to grant the rights and licenses in the Agreement to Customer;**
  3. **Vendor’s products and services do not infringe upon or violate any copyright, patents, trademark, or other proprietary or intellectual property rights of any third party; and**
  4. **Vendor and each of its employees, subcontractors, or agents who will perform the services (if any) have the necessary knowledge, skill, experience, and qualifications to provide and perform the services in accordance with the Agreement, and the services will be performed for and delivered to Customer in a diligent, professional, workmanlike manner in accordance with industry standards.**

***D. Standard TAMU-CC/State clauses (non-IT Related)***

1. Compliance with Laws: Vendor shall comply with all federal, state, and local laws, rules, and regulations, including without limitation, any data privacy and information security laws, rules, and regulations, applicable to the Protected Information and the performance of Vendor’s obligations under the Agreement (“Applicable Law”).

**2. Payment Terms:**

a. Payment shall be made in accordance with Chapter 2251, *Texas Government Code*, commonly known as the Texas Prompt Payment Act, which shall govern the remittance of payment and remedies for late payment and non-payment.

**b. As an agency of the state of Texas,** Customer is tax exempt.  Tax exemption certification will be furnished to Vendor upon request.

3. Insurance:

a. Vendor shall obtain and maintain, for the duration of the Agreement and for such length of time as is necessary to cover any and all claims, cyber and privacy liability insurance with minimum limits of coverage of $1,000,000 per event, $1,000,000 aggregate covering network security/privacy liability, privacy regulatory proceedings (including fines and penalties), privacy event expenses (mandatory/voluntary notification costs, credit monitoring, call center services, forensic, and any other fees, costs, or expenses necessary to comply with any security breach notification law that may be applicable), and cyber extortion payments.

b. All coverage must be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Customer.

c. Vendor acknowledges that Customer has not, by requiring such minimum insurance, assessed the risk that may be applicable to Vendor under the Agreement. Vendor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Vendor is not relieved of any liability or other obligations assumed pursuant to the Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

d. Vendor shall deliver to Customer evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of the Agreement and prior to the performance of any services by Vendor under the Agreement. Vendor shall provide additional evidence of insurance on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal. **Certificate(s) of Insurance shall be transmitted electronically to**: [contracts@tamucc.edu](mailto:contracts@tamucc.edu)

4. Vendor Violations: If Customer reasonably determines in good faith that Vendor has materially breached any of its obligations under this Addendum or has violated any Applicable Law, Customer, in its sole discretion, may require Vendor to submit to a plan of monitoring and reporting; provide Vendor with a 15-day period to cure the breach; or terminate the Agreement immediately. Before exercising any of these options, Customer shall provide written notice to Vendor describing the violation and the action it intends to take. Vendor acknowledges that if the Family Policy Compliance Office of the U.S. Department of Education determines that Vendor improperly disclosed personally identifiable information obtained from Customer’s education records, Customer may not allow Vendor access to education records for at least five (5) years.

5. Indemnification:

a. Vendor shall indemnify and hold harmless Customer, The Texas A&M University System (the “A&M System”), and their regents, employees, students, contractors, and agents (the “Customer Indemnitees”) from all damages, costs, liabilities, losses, and expenses, including without limitation, reasonable attorney’s fees incurred by Customer Indemnitees, in connection with any actual or threatened third-party demand, claim or legal or administrative agency action or proceeding to the extent under, arising from or related to (1) any acts or omissions of Vendor or its employees, subcontractors or agents pertaining to the activities and obligations under the Agreement (including this Addendum), (2) Vendor breaches any representation or warranty in the Agreement (including this Addendum), or (3) an allegation that any of Vendor’s products or services infringe upon or violate the intellectual property rights of a third party.

b. If Vendor’s products or services become or are likely to become the subject of an allegation that they infringe upon or violate the intellectual property rights of a third party, then Vendor may, at its expense and option, either: (a) replace or modify the products or services to make it non-infringing, while maintaining equivalent functionality; (b) procure for Customer the right to continue using the products or services pursuant to the Agreement; or (c) terminate the Agreement and refund to Customer, on a pro-rata basis, the amount of any fees that Customer has received from Vendor for the period between the effective date of termination of the Agreement and the expiration of the period for which the fees have been paid.

c. This Section shall survive the expiration or termination of the Agreement.

**Public Information:**

a. Vendor acknowledges that Customer is obligated to strictly comply with the Texas Public Information Act, Chapter 552, *Texas Government Code* (the “PIA”) in responding to any request for public information pertaining to the Agreement, as well as any other disclosure of information required by applicable Texas law.

b. Upon Customer’s written request, and at no cost to Customer, Vendor shall provide specified public information (as such term is defined in Section 552.002 of the PIA) exchanged or created under the Agreement that is not otherwise excepted from disclosure under the PIA to Customer in a non-proprietary format acceptable to Customer that is accessible by the public.

c. Vendor acknowledges that Customer may be required to post a copy of thefully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1) of the PIA.

d. The requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to the Agreement, and the Vendor agrees that the Agreement can be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

Records Retention: Vendor will preserve all contracting information, as defined under *Texas Government Code*, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven (7) years after the conclusion of the Agreement.

**Dispute Resolution:** To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Customer and Vendor to attempt to resolve any claim for breach of contract made by Vendor that cannot be resolved in the ordinary course of business. Vendor shall submit written notice of a claim of breach of contract under this Chapter to TAMU-CC Contracts Administration, who shall examine Vendor’s claim and any counterclaim and negotiate with Vendor in an effort to resolve the claim. This provision and nothing in the Agreement (including this Addendum) waives Customer’s sovereign immunity to suit or liability and Customer has not waived its right to seek redress in the courts.

**Loss of Funding:** Performance by Customer under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”).  If the Legislature fails to appropriate or allot the necessary funds, then Customer will issue written notice to Vendor, and Customer may terminate the Agreement without further duty or obligation hereunder.  The Vendor acknowledges that appropriation of funds is beyond the control of Customer. In the event of a termination or cancellation under this Section, Customer will not be liable to Vendor for any damages that are caused or associated with such termination, or cancellation.

Default and Termination:

a. In the event of substantial failure by Vendor to perform in accordance with the terms of the Agreement, Customer may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure, provided that said failure is through no fault of Customer. The termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period.

b. Customer may, without cause, terminate this Agreement at any time upon giving thirty (30) days advance notice to Vendor. Upon termination pursuant to this paragraph, Vendor shall be entitled to payment of such amount as shall compensate Vendor for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement, provided that Vendor shall deliver to Customer all completed, or partially completed, work and any and all documentation or other products and results of these services. Vendor shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of Customer. Customer shall not be required to reimburse Vendor for any services performed or expenses incurred after the date of termination notice.

c. If this Agreement is terminated for any reason, Customer shall not be liable to Vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination.

**State Auditor’s Office Right to Audit: Vendor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Vendor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Vendor will include this provision in all contracts with permitted subcontractors.**

Payment of Debt or Delinquency to the State: Pursuant to Section 2252.903, *Texas Government Code*, Vendor agrees that any payments owing to Vendor under the Agreement may be applied directly toward certain debts or delinquencies that Vendor owes the state of Texas or any agency of the state of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Delinquent Child Support Obligations: A child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement be included in the Agreement, which is certified by the signatory of the Vendor hereto: “Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this Agreement, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

Products and Materials Produced in Texas: To the extent that Vendor provides services to Customer under the Agreement, Vendor agrees that in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under the Agreement, Vendor shall purchase products and materials produced in Texas when such products and materials are available at a price and time comparable to products and materials produced outside of Texas.

**HUB Subcontracting Plan:**

* 1. **\_\_\_\_\_\_Alternative 1 - check box if no subcontracting opportunities: It is the policy of the state of Texas and Customer to encourage the use of Historically Underutilized Businesses (“HUB”) in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in Customer contracting and purchasing. Vendor has indicated it will not subcontract any of its duties or obligations under this Agreement. If Vendor will subcontract any of its duties and obligations under this Agreement, Vendor will be required to provide prior written notice to Customer and make a good faith effort to submit a HUB subcontracting plan as required under Section 20.285 of the Texas Administrative Code.**
  2. **\_\_\_\_\_ Alternative 2 - check box if there are subcontracting opportunities: It is the policy of the state of Texas and Customer to encourage the use of Historically Underutilized Businesses (“HUB”) in our contracts, purchasing transactions and through subcontracting opportunities. The goal of the HUB program is to promote equal access and equal opportunity to HUB vendors in Customer contracting and purchasing. Vendor will use good faith efforts to subcontract work performed under this Agreement in accordance with the HUB subcontracting plan attached hereto as Exhibit [\_\_] (“HSP”). Except as specifically provided in the HSP, Vendor will not subcontract any of its duties or obligations under this Agreement, in whole or in part. Furthermore, Vendor will comply with all of its duties and obligations under Section 20.285 of the Texas Administrative Code.**

Prohibited Agreements: Vendor recognizes that as a state agency, Customer may not award contracts as outlined below:

1. Compensation for Preparing Bids: Customer cannot award a contract if such contract includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. Under Section [2155.004](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=GV&Value=2155.004), *Texas Government Code*, Vendor certifies that the individual or business entity named in the Agreement is not ineligible to receive the specified contract and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.
2. Disaster Related Contracts: Customer cannot award a contract if such contract involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal, civil, or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina or any other disaster occurring after September 24, 2005. Under Section [2155.006](http://www.statutes.legis.state.tx.us/GetStatute.aspx?Code=GV&Value=2155.006), *Texas* *Government Code*, Vendor certifies that the individual or business entity named in the Agreement is not ineligible to receive the specified contract and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.
3. Prohibition on Contracts Related to Persons Involved in Human Trafficking: Under Section 2155.0061, *Texas Government Code*, the Vendor certifies that the individual or business entity named in the Agreement is not ineligible to receive the specified Contract and acknowledges that the Agreement may be terminated, and payment withheld if this certification is inaccurate.
4. **Prohibition on Contracts with Companies Boycotting Israel:** To the extent that *Texas Government Code*, Chapter 2270 applies to the Agreement, Vendor certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of the Agreement. Vendor acknowledges that the Agreement may be terminated, and payment withheld if this certification is inaccurate.

**e. Certification Regarding Business with Certain Countries and Organizations:** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Vendor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges the Agreement may be terminated if this certification is inaccurate.

f. Verification Regarding Boycotting Energy Companies: To the extent that Section 2274.002, *Texas Government Code* applies to this Agreement, Vendor certifies (1) it does not boycott energy companies and (2) will not boycott energy companies during the term of the Agreement.

g. Verification Regarding Discrimination Against Firearm Entities and Trade Associations: To the extent that Section 2274.002, *Texas Government Code* applies to this Agreement, Vendor certifies (1) it does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate against a firearm entity or firearm trade association during the term of the Agreement.

h. Force Majeure: Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party’s reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).

Not Eligible for Rehire: Vendor is responsible for ensuring that its employees involved in any work being performed for Customer under this Agreement have not been designated as “Not Eligible for Rehire” as defined in System Policy 32.02, *Discipline and Dismissal of Employees*, Section 4 (“NERF Employee”). In the event Customer becomes aware that Vendor has a NEFR Employee involved in any work being performed under this Agreement, Customer will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by Customer.

**Independent Contractor: Notwithstanding any provision of the Agreement to the contrary, the parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by the Agreement or by Vendor’s service to Customer. Except as specifically required under the terms of the Agreement, Vendor (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of Customer or the A&M System. As an independent contractor, Vendor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers’ compensation insurance. Vendor and its employees shall observe and abide by all applicable Customer policies, regulations, rules and procedures, including those applicable to conduct on its premises.**

**Governing Law: The validity of the Agreement and all matters pertaining to the Agreement, including without limitation, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.**

**Venue: Pursuant to Section 85.18(b), *Texas Education Code*, venue for a suit filed against Customer is in the county in which the primary office of the chief executive officer of Customer is located. At the execution of the Agreement, such county is Nueces County, Texas.**

**Severability: In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designed by such law or by regulation.**

Limitations: Vendor is aware that there are constitutional and statutory limitations on the authority of Customer (a Texas State agency) to enter into certain terms and conditions that may be part of the Agreement, including, but not limited to, those terms and conditions relating to liens on Customer’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 (collectively, the “Limitations”). Terms and conditions related to the Limitations will not be binding on Customer except to the extent authorized by the laws and Constitution of the State of Texas. Neither the execution of the Agreement nor any conduct, action or inaction of any representative of Customer relating to the Agreement constitutes or is intended to constitute a waiver of Customer’s or the State’s sovereign immunity to suit.

Survival: Any sections of this Addendum that expressly state or by their nature should survive the expiration or termination of the Agreement shall survive the expiration or termination of the Agreement.

**23. Conflict of Interest:** By executing the Agreement, Vendor and each person signing on behalf of Vendor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of the A&M System or the A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by the A&M System, has direct or indirect financial interest in the award of the Agreement, or in the services to which the Agreement relates, or in any of the profits, real or potential, thereof.

Should any of the terms of this Addendum conflict with the terms of the Agreement, the terms of this Addendum shall control.

The effective date of this Addendum shall coincide with the effective date of the Agreement.

[insert vendor name] Texas A&M University – Corpus Christi

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_