**Contracts Administration**

**6300 Ocean Drive, Unit 5731**

**Corpus Christi, TX 78412-5731**

**ADDENDUM TO [insert name of agreement/contract]**

**between TEXAS A&M UNIVERSITY – CORPUS CHRISTI**

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

The following terms and conditions are incorporated into and form a part of the **[insert name of agreement/contract]** (the “Agreement”) to which this Addendum is attached. “TAMU-CC” means **Texas A&M University-Corpus Christi**, a member of The Texas A&M University System, an agency of the State of Texas, and “Contractor” **means [insert Contractor name].**

**1. REPRESENTATIONS AND WARRANTIES BY CONTRACTOR:** If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that is is duly organized, validity existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

**2. FRANCHISE TAX CERTIFICATION:** If Contractor is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax code),* then Contractor certifies that it is not currently delinquent in the payment of any franchise taxes or that Contractor is exempt from the payment of fanchise taxes.

**3. ELIGIBILITY CERTIFICATION:** A state agency may not accept a bid or award a contract that 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. The *Texas Government Code* requires the following statement: “Under Section 2155.004, *Texas Government Code,* the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.”

**4. DEBTS OR DELINQUENCIES:** Pursuant to Section 2252.903, *Texas Government Code,* Contractor agrees that any payments owing to Contractor under this Agreement may be applied directly toward certain debts or delinquencies that Contractor 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.

**5. CHILD SUPPORT:** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an Agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: “Under Section 231.006, *Texas Family Code,* the 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 innaccurate.”

**6. BUY TEXAS:** With respect to all goods purchased pursuant to this Agreement, Contractor represents and warrants that goods produced in Texas will be given preference if the cost and quality are equal to the goods produced outside of Texas.

**7. PUBLIC INFORMATION ACT:**

a. Contractor acknowledges that TAMU-CC is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

1. Upon TAMU-CC’s written request, Contractor will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of TAMU-CC.
2. Contractor acknowledges that TAMU-CC may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.

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

**8. NOTICES:** Any notices required or permitted under this Agreement must be in writing and will be deemed given: (a) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (d) on the date of delivery if delivered personally. The Parties may change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

**TAMU-CC:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 6300 Ocean Drive, Unit \_\_\_\_\_\_\_\_\_\_\_

 Corpus Christi, Texas 78412

 Telephone: (361) 825-\_\_\_\_\_\_\_

 Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

With an electronic copy to: Contracts Administration

 Email: contracts@tamucc.edu

 **Contractor:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Telephone: ( ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 E-mail:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**9. GOVERNING LAW:** The validity of this Agreement and all matters pertaining thereto, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.

**10. VENUE:** This Agreement is performable in Nueces County, Texas. Pursuant to Section 85.18, *Texas Education Code,* venue for any suit filed against TAMU-CC shall be in the county in which the primary office of the chief executive officer of TAMU-CC is located. At the time of execution of this Agreement, such county is Nueces County, Texas.

**11. 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 designated by such law or by regulation.

**12. EQUAL EMPLOYMENT:** Texas A&M University-Corpus Christi is an Equal Opportunity/Affirmative Action employer and does not discriminate in employment opportunities or practices on the basis of race, sex, color, national origin, religion, age, disability, genetic information or veteran status. Contractor represents and warrants that it shall not discriminate against any person on the basis of race, sex, color, national origin, religion, age, disability, genetic information or veteran status in the performance of this Contract.

**13. FRAUD, WASTE & ABUSE:** Any vendor or individual that suspects Fraud, Waste or Abuse on procurement or contracts with Texas A&M University-Corpus Christi may wish to report this by using the confidential hotline number (888) 501-3850 or by accessing

<https://secure.ethicspoint.com/domain/media/en/gui/19681/index.html>

**14.** **PROMPT PAYMENT ACT:** It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment Act. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment.

**15. INAPPLICABLE PROVISIONS:** None of the following provisions, if they appear in the Agreement, shall have any effect or be enforceable against TAMU-CC: (i) requiring TAMU-CC to maintain any type of insurance either for TAMU-CC’s benefit or for the Contractor’s benefit; (ii) renewing or extending the initial contract term or automatically continuing or renewing the original contract term; and (iii) binding TAMU-CC to any arbitration, to the decision of any arbitration board, commission, panel or other entity, or to any other alternative dispute resolution other than is provided below.

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

**17. LOSS OF FUNDING:** Performance by TAMU-CC under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allow the necessary funds, then TAMU-CC will issue written notice to Contractor and TAMU-CC may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation of funds is beyond the control of TAMU-CC.

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

**19. INSURANCE:**

1. Contractor acknowledges that, because TAMU-CC is an agency of the State of Texas, liability for the tortuous conduct of the agents and employees of TAMU-CC or for injuries caused by conditions of tangible state property is provided for solely by the provisions of the Texas Tort Claims Act (*Texas Civil Practice and Remedies Code,* Chapters 101 and 104), and that Workers’ Compensation Insurance coverage for employees of TAMU-CC is provided by TAMU-CC as mandated by the provisions of Chapter 502, *Texas Labor code.* TAMU-CC shall have the right, at its option, to (a) obtain liability insurance protecting TAMU-CC and its employees and property insurance protecting TAMU-CC buildings and the contents, to the extent authorized by Section 51.966, *Texas Education Code,* or other law, or (b) self-insure against any risk that may be incurred by TAMU-CC as a result of its operations under this Agreement.

 2)   Contractor shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to TAMU-CC. By requiring such minimum insurance, TAMU-CC shall not be deemed or construed to have assessed the risk that may be applicable to Contractor under this Agreement. Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Contractor is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to TAMU-CC at least ten days before the effective date of the cancellation.

# Insurance:

**Coverage                                                                         Limit**

**A.      Worker’s Co mp ensation**

Statutory Benefits (Coverage A)                                Statutory

Employers Liability (Coverage B)                        $1,000,000 Each Accident

$1,000,000 Disease/Employee

$1,000,000 Disease/Policy Limit

Workers’ Compensation policy must include under on the information page of the workers’ compensation policy the state in which work is to be performed for Texas A&M University – Corpus Christi. Workers’ compensation insurance is required, and no “alternative” forms of insurance will be permitted.

# B.  Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than $1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage.

|  |  |  |
| --- | --- | --- |
| **C.** | **Commercial General Liability**Each Occurrence Limit |  $1,000,000 |
|   | General Aggregate Limit | $2,000,000 |
|   | Products / Completed Operations | $1,000,000 |
|   | Personal / Advertising Injury | $1,000,000 |
|   | Damage to rented Premises | $   300,000 |
|   | Medical Payments | $       5,000 |

The required commercial general liability policy will be issued on a form that insures Contractor or its subcontractors’ liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement

**D.** Contractor will deliver to TAMU-CC: Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by Contractor under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

***All insurance policies***, with the exception of worker’s compensation, employer’s liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and Texas A&M University – Corpus Christi as Additional Insureds up to the actual liability limits of the policies maintained by Contractor. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

***All insurance policies*** will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System, The Texas A&M University System and Texas A&M University – Corpus Christi. No policy will be canceled without unconditional written notice to Texas A&M University – Corpus Christi at least ten days before the effective date of the cancellation. ***All insurance policies*** will be endorsed to require the insurance carrier providing coverage to send notice to Texas A&M University – Corpus Christi ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required.

Any deductible or self-insured retention must be declared to and approved by Texas A&M University – Corpus Christi prior to the performance of any services by Contractor under this Agreement. Contractor is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be delivered electronically to TAMU-CC’s Contracts Administration at contracts@tamucc.edu

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by Texas A&M University – Corpus Christi in writing.

**20. 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).

**21. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL:** To the extent that Texas Government Code, Chapter 2271 applies to this Agreement, Vendor/Contractor certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement.  Vendor/Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**22. CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS:** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Contractor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated if this certification is inaccurate.

**23. PROHIBITION ON CONTRACTS RELATED TO PERSONS INVOLVED IN HUMAN TRAFFICKING**: Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

**24. VERIFICATION REGARDING BOYCOTTING ENERGY COMPANIES**: To the extent that Section 2274.002, Texas Government Code applies to this Agreement, Contractor certifies (1) does not boycott energy companies and (2) will not boycott energy companies during the term of this Agreement.

**25. VERIFICATION REGARDING DISCRIMINATION AGAINST FIREARM ENTITIES and TRADE ASSOCIATIONS**: To the extent that Section 2274.002, *Texas Government Code* applies to this Agreement, Contractor certifies (1) 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 this Agreement.

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

**27.  NOT ELIGIBLE FOR REHIRE:**  Contractor is responsible for ensuring that its employees involved in any work being performed for TAMU-CC 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 (“NEFR Employee”). In the event TAMU-CC becomes aware that Contractor has a NEFR Employee involved in any work being performed under this Agreement, TAMU-CC 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 TAMU-CC.

**28. CERTIFICATION REGARDING PRODUCTS FROM THE GAZA STRIP:** Contractor represents and warrants that the goods it provides to TAMU-CC under this Agreement are not produced in or exported from the Gaza Strip or from any organization or state actor with ties to Hamas.

**29.  TERMINATION:**

1. TAMU-CC may, without cause, terminate this Agreement or SOW at any time upon giving thirty (30) days advance notice to Contractor.  Upon termination pursuant to this paragraph, Contractor shall be entitled to payment of such amount as shall compensate Contractor for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement, provided that Contractor shall deliver to TAMU-CC (if applicable) all completed, or partially completed, work and any and all documentation or other products and results of these services.  Contractor 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 TAMU-CC. TAMU-CC shall not be required to reimburse Contractor for any services performed or expenses incurred after the date of termination notice.
2. If this Agreement is terminated for any reason, TAMU-CC shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination.
3. In the event of substantial failure by Contractor to perform in accordance with the terms of this Agreement, TAMU-CC 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 TAMU-CC.  The termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period.

**30. LIMITATIONS:** The Parties are aware that there are constitutional and statutory limitations on the authority of TAMU-CC (a state agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on TAMU-CC’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”), and terms and conditions related to the Limitations will not be binding on TAMU-CC except to the extent authorized by the laws and Constitution of the State of Texas. Neither the execution of this Agreement by TAMU-CC nor any other conduct, action, or inaction of any representative of TAMU-CC relating to this Agreement constitutes or is intended to constitute a waiver of TAMU-CC’s or the state’s sovereign immunity to suit.

**31. CONFLICT OF INTEREST:** By executing this Agreement, Contractor and each person signing on behalf of Contractor 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 Texas A&M University System or The Texas A&M University System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The Texas A&M University System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

**32.  NON-WAIVER PROVISION:** Contractorexpressly acknowledges that TAMU-CCis an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMU-CC of its right to claim such exemptions, privileges, and immunities as may be provided by law.

**33. INDEMNIFICATION**: Contractor shall defend, indemnify and hold harmless TAMU-CC, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with or resulting from any acts or omissions of Contractor or any agent, employee or representative of Contractor in the execution or performance of this Contract.

**34. ADDENDUM CONTROLLING:** In the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control.

**35. ENTIRE AGREEMENT; MODIFICATIONS:** The Agreement, as amended and supplemented by this Addendum, supersedes all prior agreements, written or oral, between Contractor and TAMU-CC and will constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof.  The Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except in writing and signed by TAMU-CC and Contractor.

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed, intending thereby to be legally bound.

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

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

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

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_