

























Email: [procurement@uta.edu](mailto:procurement@uta.edu)

**With a copy to:**

The University of Texas at Arlington  
CFO & Vice President  
Box 19101  
Arlington, Texas 76019  
Fax: 817-272-2822

**If to You:**

As per your address/fax/email information noted on purchase order or other person or address as may be given in writing by either party to the other in accordance with this Section.

22. **Undocumented Workers.** The Immigration and Nationality Act (8 *United States Code* 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 verification (8 *Code of Federal Regulations* 274a). Among other things, You are 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 law. 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 this individual’s national origin or citizenship status. If You employ unauthorized workers during performance of this Agreement in violation of the Immigration Act, then in addition to other remedies or penalties prescribed by law, UTA may terminate this Agreement immediately and without penalty, liability or further obligation to You. You represent and warrant that You are in compliance with and agree that You will remain in compliance with the provisions of the Immigration Act.
23. **State of Texas Computer Equipment Recycling Program Certification.** If this Agreement is for the purchase or lease of computer equipment, Pursuant to Section 361.965, *Texas Health and Safety Code*, Contactor certifies that it is in full compliance with the State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act set forth in Subchapter Y, Chapter 361, *Texas Health and Safety Code*, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in 30 *Texas Administrative Code* Chapter 328. You acknowledge that UTA may immediately terminate this Agreement without penalty, liability or further obligation to You if this certification is inaccurate.
24. **Responsibility for Individuals Performing Services; Criminal Background Checks.** Each individual who is assigned to perform the Services under this agreement will be an employee of You or an employee of a permitted subcontractor engaged by You. You are responsible for the performance

of all individuals performing the work under this agreement. Prior to commencing Services, You will provide UTA with a list ("list") of all individuals who may be assigned to perform the Services and perform an appropriate criminal background screening on all such individuals.

**24.1.** You shall determine on a case-by-case basis whether each individual assigned to perform the Services is qualified to provide such Services. Unless an exception is granted by UTA in writing, You will not knowingly assign any individual to provide services on UTA's campus who has a history of criminal conduct unacceptable for a university campus, including any of the following:

- Drug distribution activity or felony drug possession
- Sexual offenses
- Crimes of violence involving physical injury to a person
- Child abuse, molestation or other crimes involving child engagement
- Murder
- Kidnapping
- Theft or embezzlement
- Any crime involving moral turpitude

**24.2.** Prior to commencing Services under this agreement, You will provide UTA a letter signed by Your authorized representative certifying compliance with this Section. You will provide UTA an updated certification letter each time there is a change in the individuals assigned to perform the work. Any request for an exception will be considered by UTA's Office of Human Resources taking into consideration, inter-alia, the nature and gravity of any criminal offense.

**25.** **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, You agree to use Your best efforts to mitigate the impact of the occurrence so that UTA may continue to provide mission critical services during the force majeure occurrence.

**26.** **Termination.**

**26.1.** UTA may, without cause, terminate this Agreement at any time upon giving seven (7) days' advance written notice to You. Upon termination pursuant to this Section, You will be entitled to payment of an amount that will compensate You for Services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement; provided, that, You have delivered all Work Material (later defined in this Agreement) to UTA. Notwithstanding any provision in this Agreement to the contrary, UTA will not be required to pay or reimburse You for any services performed or for expenses incurred by You after the date of the termination notice that could have been avoided or mitigated by You.

- 26.2.** 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.
- 26.3.** Termination under **Sections 26.1 or 26.2** will not relieve You from liability for any default or breach under this Agreement or any other act or omission of You.
- 26.4.** If you fail to cure any default within fifteen (15) days after receiving written notice of the default, UTA will be entitled (but will not be obligated) to cure the default and will have the right to offset against all amounts due to You under this Agreement, any and all reasonable expenses incurred in connection with UTA’s curative actions.
- 26.5.** In the event that this Agreement is terminated, then within thirty (30) days after termination, You will reimburse UTA for all fees paid by UTA to You that were (1) not earned by You prior to termination, or (2) for goods or services that UTA did not receive from You prior to termination.
- 27. Payment Card Industry Standards.** UTA 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 UTA 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). *If some or all System Components in Scope have been outsourced to You under this Agreement, this Section applies to You,* and You will cause Your agents and subcontractors to comply with all terms of this Section applicable to You. You 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. You will provide to UTA (1) on or before the date this Agreement is signed by UTA, and (2) within ten (10) days after each anniversary of the date this Agreement is signed by UTA, a copy of Your annual attestation of compliance signed by a Qualified Security Assessor (QSA) as described on the PCI SSC website. If You are unable to provide the required attestations of compliance, You will permit UTA or UTA’s QSA to assess all System Components in Scope that are hosted or managed by You or by Your agents or subcontractors. You 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. You will, upon written request by UTA 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 UTA to facilitate the validation of UTA’s PCI DSS compliance, and (2) UTA’s

information technology, information security, audit, compliance and other staff. You will retain the documentation for at least one (1) year after termination of this Agreement.

**28. Confidentiality And Safeguarding of Personal Information and UTA Records.**

**28.1. UTA Records:** Under this Agreement, You may (1) create, (2) receive from or on behalf of UTA, and/or (3) have access to, records or record systems (collectively “UTA Records”). Among other things, UTA Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable laws, including the European Union’s General Data Protection Regulations (“GDPR”). You represent, warrant, and agree that You will: (1) hold UTA Records in strict confidence and will not use or disclose UTA Records except as (a) permitted or required by this Agreement, (b) required by applicable laws, including the GDPR, or (c) otherwise authorized by UTA in writing; (2) safeguard UTA 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, as well as the Payment Card Industry Data Security Standards, if applicable) that are no less rigorous than the standards by which You protect Your own confidential information; (3) continually monitor Your operations and take any action necessary to assure that UTA Records are safeguarded and the confidentiality of UTA Records is maintained in accordance with all applicable laws and the terms of this Agreement; and (4) comply with UTA Rules regarding access to and use of UTA’s computer systems, including UTS 165 at <http://www.utsystem.edu/board-of-regents/policy-library/policies/uts165-information-resources-use-and-security-policy>. At UTA’s request, You agree to provide UTA with a written summary of the procedures You use to safeguard and maintain the confidentiality of UTA’s Records.

**28.2. Information Security:** *When You have electronic access (hosting, collecting, storing, transmitting or otherwise) to UTA Confidential Information*, You will reasonably cooperate with UTA’s Information Security Officer (“ISO”) to confirm Your compliance with the Agreement, applicable laws, and industry standards. This means, at a minimum, that within fifteen (15) days of UTA’s written request, You will accurately complete a written information security questionnaire provided by UTA’s ISO attesting to Your security practices in relation to Your business and information technology environment (including, but not limited to, physical, administrative and technical controls) with regard to all Confidential Information being handled and/or services being provided by You to UTA pursuant to the Agreement. To the extent allowed by law, UTA shall treat the information provided by You in the security questionnaire as Your Confidential Information. You shall fully and reasonably cooperate with UTA and respond to any inquiries related to risks identified within five (5) business days. You agree to permit vulnerability testing of Hosted Software with written notice from UTA and agree to hold UTA harmless if such testing leads to disruption or data loss.

**28.2.1. Cybersecurity Training Program:** If You and/or Your subcontractors, officers, or employees will have an account on a state computer system (for example, an account to an application, database, or network), then

pursuant to Section 2054.5192, *Texas Government Code*, You and Your subcontractors, officers, and employees must complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code* and selected by UTA. The cybersecurity training program must be completed by You and Your subcontractors, officers, and employees during the term and any renewal period of this Agreement. Contractor shall provide verification of successful completion of the program to UTA.

**28.3. Disclosure And Impermissible Use.** In the event You are requested to disclose UTA Records for purposes other than those authorized in this Agreement, You shall immediately notify UTA of such request prior to disclosing the information to allow UTA an opportunity to object to the disclosure.

**28.3.1.** If You disclose any University Records to a subcontractor or agent, You will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on You by this Section.

**28.3.2.** If an impermissible use or disclosure of UTA Records occurs, You will provide written notice to UTA within one (1) business day after Your discovery of that use or disclosure. You will promptly provide UTA with all information requested by UTA regarding the impermissible use or disclosure.

**28.4. Breach of Certain Confidential Information.** In cases of a security breach of UTA's Confidential Information governed by federal or state breach notification laws (for example Sensitive Personal Information under Chapter 521, *Texas Business and Commerce Code*), You will bear UTA's cost of security breach compliance and remediation including, but not limited to required notifications for each affected individual, investigation and public relations costs. You will make payment to UTA for these costs within thirty (30) days of receipt of Uta's invoice unless otherwise agreed in writing between You and UTA.

**28.5. Return of UTA Records.** You agree that within thirty (30) days after the expiration or termination of this Agreement for any reason, all UTA Records created or received from or on behalf of UTA will be (1) returned to UTA with no copies retained by You; or (2) if return is not feasible, securely destroyed. Securely Destroyed for the purposes of this Agreement means shredding, erasing or otherwise modifying a record so as to make it unreadable or indecipherable. Twenty (20) days before destruction of any UTA Records, You will provide UTA with written notice of Your intent to destroy such records. Within five (5) days after destruction, You will confirm to UTA in writing the destruction of UTA Records.

**28.6. Termination.** In addition to any other termination rights in this Agreement and any other rights at law or equity, if UTA reasonably determines that You have breached any of the



restrictions or obligations in this Section, UTA may immediately terminate this Agreement without notice or opportunity to cure.

**28.7. Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

**28.8. FERPA.** If Your performance under this Agreement requires Your access to certain UTA Confidential Information that is defined as “Education Records” by the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”), You are designated as a University Official with a legitimate educational interest in and with respect to such Educational Records, but only to the extent You are required to create, receive or maintain Educational Records to carry out the underlying Agreement. In addition to the Confidentiality requirements in this Section as to UTA Records, You understand and agree that the following terms and conditions also apply to Education Records without reservation:

**28.8.1. Reporting Of Unauthorized Disclosures or Misuse of Education Records And Information:** Within one (1) day after discovery, You will report to UTA any use or disclosure of Education Records not authorized by this Agreement. Your report will identify: (1) the nature of the unauthorized use or disclosure, (2) the Education Records used or disclosed, (3) who made the unauthorized use or received the unauthorized disclosure, (4) what You have done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (5) what corrective action You have taken or will take to prevent future similar unauthorized use or disclosure. You will provide such other information, including written reports, as reasonably requested by UTA. For purposes of this Section, an unauthorized disclosure or use includes any access or use of an “Education Record” (as defined by FERPA) by You, Your employee or agent that the employee or agent does not require to perform Services or access by any employee or agent that does not involve the provision of Services.

**28.8.2. Right to Audit:** If UTA has a reasonable basis to believe that You are not in compliance with the terms of this Agreement, UTA may audit Your compliance with FERPA as Your compliance relates to UTA’s Education Records maintained by You.

**28.8.3. Five-Year Exclusion for Improper Disclosure of Education Records:** Under the federal regulations implementing FERPA, improper disclosure or redisclosure of personally identifiable information from UTA’s “Education Records” (as defined by FERPA) by You or Your employees or agents may result in Your complete exclusion from eligibility to contract with UTA for at least five (5) years.

**28.8.4. Disclosure:** You will restrict disclosure of Education Records solely to those employees, subcontractors, or agents that have a need to access the Education Records in order for You to perform Your obligations under the Agreement. If You disclose any Education Records to a subcontractor or agent, You will require the subcontractor or agent to comply with restrictions and obligations that align with the restrictions and obligations imposed on You by the Agreement, including requiring each subcontractor or agent to agree to the same restrictions and obligations in writing.

**29. Intellectual Property.** Any programs, data, training materials, or other work product, in any format, created under the Agreement or under an executed scope of work, shall be the property of UTA, unless otherwise specifically set forth in the Agreement. Anything furnished to You by UTA pursuant to this Agreement including samples, drawings, patterns, and materials will remain the property of UTA, will be held at Your risk, and will be returned to UTA upon UTA's request, and no disclosure or reproduction thereof in any form will be made by You without UTA's prior written consent.

**30. Contractor Compliance and Certification Relating to Cloud Computing Services.** Section 2054.0593 of the *Texas Government Code* (enacted by [SB 475, 87<sup>th</sup> Texas Legislature, Regular Session \(2021\)](#)) requires the Texas Department of Information Resources (DIR) to establish and implement a state risk and authorization management program to provide a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services that process the data of Texas state agencies. DIR by rule shall prescribe (1) the categories and characteristics of cloud computing services subject to the state risk and authorization management program and (2) the requirements for certification through the program of vendors that provide cloud computing services. DIR shall evaluate vendors to determine whether a vendor qualifies for a certification issued by DIR reflecting compliance with program requirements. Texas state agencies must ensure that each contract for cloud computing services that the agency enters into or renews on or after January 1, 2022, complies with Section 2054.0593.

As a result, Contractor must comply with the requirements of such a state risk and authorization management program and maintain program compliance and certification throughout the term of this Agreement. Contractor understands and agrees that the University may not enter into or renew a contract with Contractor to purchase cloud computing services for the University that are subject to the state risk and authorization management program unless Contractor demonstrates compliance with program requirements. Contractor acknowledges this Agreement may be terminated and payment withheld if Contractor does not comply with this Section.

**31. Data and Backup Recovery Language.** 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 Agreement in the event of any disaster or other adverse event affecting UTA and/or Contractor, including but not limited to natural disasters, system disk drive failures, espionage, data entry errors, human error, or system

operations errors. Contractor agrees that unless otherwise defined in the Agreement, its Recovery Time Objective will equal no more than (24) hour(s) downtime. This means that in the event of a disaster or outage, Contractor will restore the functionality of the Contractor's service or application within (24) hour(s). Contractor agrees that unless otherwise defined in the Agreement, its Recovery Point Objective is no more than (24) hour(s) of data loss. This means that in the event of an outage, Contractor will ensure that no more than (24) hour(s) worth of data is lost. Contractor represents and warrants that no UTA data will be stored outside of the United States unless specifically agreed between UTA and Contractor prior to any such storage. Contractor agrees that no UTA data will be processed or transferred to any portable storage or computing device or medium unless that device or medium is used as part of Contractor's backup and recovery process. Contractor agrees to store all UTA data, stored as part of its backup and recovery process in encrypted form, using a commercially supported encryption solution. All backup media must be encrypted using AES-256 encryption in accordance with NIST FIPS 197 standards. Encryption keys must be managed according to NIST SP 800-57 guidelines, with secure key generation, storage, and rotation practices. The Contractor must comply with NIST standards, including but not limited to NIST SP 800-111 and NIST SP 800-88, for all backup encryption and media sanitization practices. Access to backup media and encryption keys shall be restricted to authorized personnel only, with role-based access controls and multi-factor authentication implemented as per NIST SP 800-53 guidelines.

32. **Press Releases and Third-Party Disclosures.** You will not make any press release, public statement, advertisement, disclosure, description or other communication of any sort to any third party referring to UTA's purchase under this Agreement, engagement of You as an independent contractor or release any information relative to the Agreement for publication, advertisement or any other purpose without the prior written approval of UTA.
33. **Public Information.** UTA strictly adheres to all statutes, court decisions and opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act* (the "TPIA"), Chapter 552, *Texas Government Code*. In accordance with Section 552.002 of the TPIA and Section 2252.907, *Texas Government Code*, and at no additional charge to UTA, You will make any information created or exchanged with UTA pursuant to this Agreement (and not otherwise exempt from disclosure under the TPIA) available in a format reasonably requested by UTA that is accessible by the public.
- 33.1. **Subchapter J Requirements:** If applicable, pursuant to Section 552.372 of the *Texas Government Code*, You must: (1) preserve all contracting information (Section 552.003(7) *Texas Government Code*) related to this Agreement as provided by the records retention requirements applicable to UTA for the duration of this Agreement; (2) promptly provide to UTA any contracting information related to this Agreement that is in the custody or possession of You on request of UTA; and (3) on completion of this Agreement, either: (a) provide at no cost to UTA all contracting information related to this Agreement that is in the custody or possession of You, or (b) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to UTA.

- 33.2.** If applicable, the requirements of Subchapter J, Chapter 552, *Texas Government Code* (“Subchapter J”) may apply to this Agreement, and You agree that the Agreement can be terminated if You knowingly or intentionally fail to comply with a requirement of Subchapter J.
- 33.3.** UTA may not accept a bid for a contract described by Section 552.371, *Texas Government Code* or award the contract to an entity that UTA has determined has knowingly or intentionally failed to comply with Subchapter J in a previous bid or contract described by Section 552.371 unless UTA determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of Subchapter J.
- 33.4.** If You fail to comply with the requirements of Subchapter J applicable to You, then UTA shall provide written notice to You stating the requirement(s) of Subchapter J that You have violated. If applicable, such notice will also advise You that UTA may terminate this Agreement without further obligation to You if (1) You do not cure the violation on or before ten (10) business days after the date UTA provides the notice; (2) UTA determines that You have intentionally or knowingly failed to comply with a requirement of that Subchapter J, and (3) UTA determines that You have not taken adequate steps to ensure future compliance with the requirements of Subchapter J. For purposes of the above, You have taken adequate steps to ensure future compliance with Subchapter J if: (a) You produce contracting information requested by UTA that is in the custody or possession of You not later than ten (10) business days after the date UTA makes the request; and (b) You establish a records management program to enable You to comply with Subchapter J.
- 34. Limitations Of Liability.** Except for UTA’s obligation (if any) to pay You certain fees and expenses, UTA will have no liability to You or to anyone claiming through or under You by reason of the execution or performance of this Agreement. Notwithstanding any duty or obligation of UTA to You or to anyone claiming through or under You, no present or future affiliated enterprise, subcontractor, agent, officer, director, employee, representative, attorney or regent of UTA, or The University of Texas System, or anyone claiming under UTA has or will have any personal liability to You or to anyone claiming through or under You by reason of the execution or performance of this Agreement.
- 34.1.** Nothing in the Agreement shall limit Your liability: (1) in tort for Your willful or intentional misconduct; or (2) for bodily injury or death proximately caused by negligence; or (3) loss or damage to real property or tangible personal property proximately caused by negligence; or (4) any indemnification obligations under the Agreement; or (5) for infringement of any copyrights, patents or trademarks with respect to its products or services.
- 35. 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.
- 36. 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.

37. **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
38. **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.
39. **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, including but not limited to **Sections 12, 15, 17, 18, 19, 28 and 29.**