

THE UNIVERSITY OF TEXAS AT ARLINGTON PURCHASE ORDER TERMS AND CONDITIONS

The University of Texas at Arlington is a public institution of higher education, an agency of the State of Texas, and a component institution of the University of Texas System, with a principal place of business at 701 S. Nedderman Drive, Arlington, Texas 76019 (“UTA”). The UTA Purchase Order Terms and Conditions (this document) (hereinafter referred to as the “UTATC”) is the controlling document with respect to the purchase of all goods and/or services [including desktop, server or web application software (“Software”) and software maintenance/support related services] (the “Goods and/or Services”), purchased pursuant to the issuance of a UTA Purchase Order (the “PO”).

The UTATC is a legally binding contractual document between UTA and the party selling/providing the Goods and/or Services to UTA under the PO (hereinafter referred to as “You”, “Your”, “Yours” as appropriate). By issuance of a PO, UTA rejects Your terms and conditions as stated, regardless of the manner in which they are stated, and the UTATC is UTA’s counteroffer. The UTATC overrides any and all of Your conflicting terms and conditions, whether provided before or after the issuance of the PO, expressly stated in writing on a quote, invoice or other similar document, referenced by embedded link(s), provided through shrinkwrap, clickwrap, browswrap, web-based, or other electronic means, or provided in any other manner. The UTATC overrides any and all of Your conflicting terms and conditions even if Your terms and conditions assert that they are the final, governing, and/or controlling terms and conditions of the purchase, and even if Your terms and conditions are signed by UTA.

Your performance pursuant to the issuance of the PO indicates Your acceptance of the UTATC, and You waive any rights to assert otherwise. The PO, the UTATC and Your terms and conditions that are not in conflict with the PO or the UTATC constitute the entire agreement between UTA and You (“Agreement”) and supersedes all prior agreements whether written or oral between You and UTA with respect to the subject matter of the Agreement. This Agreement may not be modified, amended or altered except in a writing signed by authorized representatives of UTA and You.

- 1. Freight.** UTA CANNOT ACCEPT COLLECT FREIGHT SHIPMENTS. Please prepay all freight charges. In the event UTA and You have agreed that UTA will pay the shipping charges, and the PO specifies F.O.B. meaning the cost of shipping is included in the purchase price, please prepay freight and add this amount to Your invoice.
- 2. Title And Risk of Loss.** Title to and risk of loss to goods to be delivered under this Agreement will not pass to UTA until the UTA department ordering the goods receives and takes actual possession of such goods. In the event goods are delivered to UTA’s central receiving department, it will not open any sealed deliveries. Employees in UTA’s central receiving department are not qualified to inspect Goods and/or approve the condition of Goods delivered to UTA, but will transmit them to the ordering department, at which time goods will be inspected to ensure compliance with

Section 12.5 of these terms and conditions, and at which time delivery will be complete and title and risk will pass to UTA. An employee's signature indicating that Goods have been received in good or acceptable condition is not an indication of UTA's inspection and approval of the condition of the Goods delivered, unless the signature is from the ordering department, but only an indication the goods have been received by UTA, even if the delivery documentation states the goods have been received, inspected and approved as to condition.

3. **Payment.** UTA shall pay You in accordance with Chapter 2251 of the *Texas Government Code* so long as You have provided UTA with Your current and accurate Federal Tax Identification Number in writing and all goods or services are provided as set forth in the Agreement. UTA will not be determined or held to have received any goods provided by You under this Agreement until You have provided to UTA a written document in a form reasonably acceptable to UTA documenting Your delivery of those goods to UTA in compliance with the terms of this Agreement (a "proof of delivery"). The compensation payable under the Agreement shall not exceed the amount set forth in the Agreement without prior written approval of UTA. Goods and/or Services provided in excess of this amount, without UTA's prior written approval, are performed at the risk of non-payment.
4. **State Sales and Use Tax Exemption.** UTA is exempt from Texas Sales & Use Tax on Goods and/or Services covered by this Agreement in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* ("TAC") Section 3.322. Pursuant to 34 TAC 3.322(c)(4) and (g)(3), this Agreement is sufficient proof of UTA's tax exempt status and UTA is not required to provide further evidence of its exempt status.
5. **Delivery; Substitutes; and Invoices.** Delivery shall be made only to the location shown on the PO during the following hours: 8:00 AM – 12:00 noon and 1:00 PM – 4:30 PM (CST). You will keep UTA advised at all times of the status of delivery or performance under this Agreement. If delay is foreseen, You will give prompt written notice to UTA Procurement Services, Box 19135, Arlington, Texas 76019. Upon notice of delay, UTA may extend the delivery date in its sole discretion. You will only tender for acceptance those goods and services that conform to the requirements of the Agreement. Substitutions, cancellations and price changes will require prior written consent of UTA. Default in promised delivery or failure to conform to the requirements of the Agreement authorizes UTA to purchase goods or services elsewhere and charge to You any excess expense of such repurchase. You will show the PO number on all packages and shipments, and You will submit an itemized invoice showing the PO number and a valid Vendor ID number.
6. **Venue; Choice of Law.** Tarrant County, Texas shall be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties thereto and all of the terms and conditions thereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
7. **Breach of Contract Claims.** To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by UTA and You to attempt to resolve any claim made by

You for breach of contract that cannot be resolved in the ordinary course of business. UTA's Chief Legal Officer will examine Your claim and any counterclaim and negotiate with You in an effort to resolve such claim(s). You specifically acknowledge that (1) neither the execution of the Agreement by UTA nor any other conduct, action or inaction of any representative of UTA relating to this Agreement constitutes or is intended to constitute a waiver of UTA's or the State of Texas' sovereign immunity to suit; and (2) UTA has not waived its right to seek redress in the courts.

8. **Limitations.** You fully acknowledge that as a State Agency, UTA is created by statute and may constitutionally exercise only those powers properly delegated to it by the Texas Legislature. Therefore, there may be constitutional and statutory limitations on the authority of UTA to enter into certain terms and conditions, including but not limited to: those related to liens on UTA'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 any terms and conditions related to the limitations will not be binding on UTA except to the extent authorized by the laws and Constitution of the State of Texas.
9. **Antitrust Laws; Claims for Overcharges.** You warrant and represent that neither You nor any party acting on Your behalf has violated the antitrust laws of the United States or of the State of Texas. You hereby assign to UTA any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 U.S.C. § 1, et seq., or of the State of Texas, Chapter 15, *Texas Business Commerce Code*.
10. **Access to Electronic Resources.** *If this Agreement is pursuant to UTA's purchase of Electronic Information Resources from You* (including all associated information, documentation, and support) (the "EIR"), You represent and warrant (the "EIR Accessibility Warranty") that all EIR that You provide to UTA pursuant to this Agreement comply with the applicable accessibility requirements set forth in 1 *Texas Administrative Code*, Chapter 213 and 1 *Texas Administrative Code*, Section 206.70 (as authorized by Subchapter M, Chapter 2054, *Texas Government Code*). To the extent You become aware that the EIR, or any portion thereof, do not comply with the EIR Accessibility Warranty, then You represent You will, at no cost to UTA, either (1) perform all necessary remediation to make the EIR satisfy the EIR Accessibility Warranty; or (2) replace the EIR with new EIR that satisfy the EIR Accessibility Warranty. In the event that You fail to do so, or are unable to do so, then UTA may at its sole option immediately terminate this Agreement upon written notice to You, without penalty, liability and further obligation to You. Upon such termination, You will refund to UTA all amounts UTA has paid under the Agreement within thirty (30) days after the date of termination.
11. **Telecommunication Purchases.** If this UTATC supports the purchasing of telecommunication equipment or services, then You agree, attest, and confirm that such telecommunication equipment or services are in compliance with 47 U.S.C. §255 and 36 C.F.R. §1194.2, Appendix B, in accordance with the requirements of 1 *Texas Administrative Code*, §213.31.

- 12. Additional Warranties.** In addition to all warranties established by law, You hereby represent, covenant, certify, warrant and agree that:
- 12.1.** If You are a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, You are duly organized, validly existing and in good standing under the laws of the State of Texas, or the state in which You are organized, and You are duly authorized and in good standing to conduct business in the State of Texas.
 - 12.2.** If You are a taxable entity as defined by Chapter 171, *Texas Tax Code* (“Chapter 171”), You are not currently delinquent in the payment of any taxes due under Chapter 171, You are exempt from the payment of those taxes, or You are an out-of-state taxable entity that is not subject to those taxes.
 - 12.3.** In accordance with Sections 2107.008 and 2252.903, *Texas Government Code*, You agree that any payments owed to You under this Agreement may be applied directly toward any debt or delinquency that You owe the State of Texas or any agency of the State of Texas regardless of when it arises.
 - 12.4.** In accordance with Section 231.006, *Texas Family Code*, You are eligible to receive payment on the State of Texas contracts, including payment under this Agreement. This Agreement may be terminated, and payment may be withheld at UTA’s sole option if this certification is inaccurate.
 - 12.5.** All Goods and/or Services purchased under this Agreement will conform to the specifications, drawings, samples or other descriptions furnished or adopted by UTA (collectively “specifications”), and will be new, merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. UTA will have the rights of inspection and approval and may reject and return Goods or require re-performance of Services at Your expense if defective or not in compliance with UTA’s specifications. Defects will not be deemed waived by UTA’s failure to notify You upon receipt of the Goods or completion of the Services or by payment of invoice.
 - 12.6.** Software purchased under this Agreement that is hosted by UTA, or hosted by or on behalf of You (“Hosted Software”), will be free from malicious software such as viruses, known vulnerabilities and other destructive code. Software hosted by or on behalf of You will be available to UTA 99.9% of the time in any calendar month, with the exception of downtime for planned maintenance. You agree to implement prevailing best practices to prevent any vulnerabilities or malicious Software from causing UTA data to be breached or otherwise compromised within one (1) business day of discovery.
 - 12.7.** You are familiar with and are in full compliance with Your obligations, if any, under all applicable federal, state and local, laws, regulations, and ordinances related to this purchase.

- 12.8.** All Goods and/or Services provided pursuant to this Agreement will conform to the standards established for such Goods and/or Services by all applicable laws, including those standards promulgated by the federal Occupational Safety and Health Administration (“OSHA”) and the Texas Hazard Communication Act, Chapter 502, *Texas Health and Safety Code* (“Texas Hazard Communication Act”). Furthermore, You will provide either (1) a Material Safety Data Sheet (“MSDS”) for each product You or Your employees, agents or subcontractors bring onto UTA’s premises; or (2) a statement of exemption if the product is not covered by the Texas Hazard Communication Act.
- 12.9.** Use or sale of Goods and/or Services delivered under this Agreement, except goods produced to UTA’s detailed design, will not infringe any adverse valid patent, copyright, trademark or other intellectual property right. You have the right to license the rights, if any, granted to UTA under this Agreement. You have obtained any and all necessary permissions from third parties to license the licensed materials, and use of the licensed materials by UTA, in accordance with the purpose of the Agreement, will not infringe or misappropriate any patent, trademark, copyright, trade secret or any other intellectual property right arising out of the use of the licensed materials by UTA.
- 12.10.** The price of Goods and/or Services under the Agreement will be no higher than Your current prices for Goods and/or Services of the kind covered by this Agreement for similar quantities, to similar customers, and under similar conditions (“Orders by Others”). In the event You breach this warranty, the price charged to UTA will be reduced to Your current price on Orders by Others and UTA will be reimbursed any overcharges paid for; in the alternative, UTA at its sole discretion may terminate this Agreement without penalty, liability or further obligation to You.
- 12.11.** For a period of four (4) years after UTA’s acceptance of the Goods and/or Your completion of the Services under this Agreement, whichever occurs last, You shall maintain supporting records of Your costs, reimbursable expenses, and all payments, including any underlying documents and related materials, related to the said purchase (the “Records”). Upon reasonable notice by UTA, and at UTA’s expense, You shall make such records available for inspection and audit. Such records shall be made available to UTA during normal business hours at Your office or place of business. Costs of any audits conducted under the authority of this right to audit will be borne by UTA unless certain exemption criteria are met as follows. If the audit identifies inaccuracies (of any nature) by You to UTA in excess of one-half of one percent (.5%) of the total Agreement billings, You shall reimburse UTA the total costs of the audit. Any adjustments and/or payments that must be made as a result of such audit or inspection of Your records shall be made within a reasonable amount of time, but not to exceed ninety (90) days, from UTA’s presentation of findings to You.
- 12.12.** If this Agreement requires Your presence on UTA’s premises or in UTA’s facilities, You will cause Your employees, representatives, agents, and/or subcontractors to become fully aware of, be informed about, and to comply with all *applicable* UTA rules and

policies, including those related to personal health, safety and security, environmental quality, fire prevention, noise, parking, smoking (UTA is a tobacco-free campus) and access restrictions. These policies are available on UTA's website at the following link: <https://www.uta.edu/policy/hop>.

- 12.13.** You have not given or offered to give, nor do You intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
- 12.14.** Pursuant to Section 2270.002 of the *Texas Government Code*, You certify that either (1) You meet an exemption criterion under Section 2270.002; or (2) You do not boycott Israel and will not boycott Israel during the term of the Agreement. You acknowledge this Agreement may be terminated and payment withheld if this certification is inaccurate. If You meet an exemption, You will provide UTA written notice of the exemption before the PO is issued.
- 12.15.** As prohibited by Chapter 2270, *Texas Government Code*, You are not a company identified by: (1) the Texas Comptroller as a company with business operations in Sudan; (2) the Texas State Pension Review Board as a company with business operations in Iran; or (3) the Texas Comptroller as a company known to have contracts with, or known to provide supplies or services to, a foreign terrorist organization. (Companies the United States government affirmatively declares as excluded from its federal sanctions regime relating to Sudan, Iran or foreign terrorist organizations are excepted from this prohibition.)
- 12.16.** As required by Chapter 552, *Texas Government Code*, if this Agreement is for goods or services of at least \$1,000,000.00, You will (1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to UTA for the duration of the Agreement; (2) promptly provide UTA any contracting information related to the Agreement that is in Your custody or possession on UTA's request; and (3) on completion of the Agreement, either: provide to UTA at no cost all contracting information related to the Agreement that is in Your custody or possession or preserve the contracting information related to the Agreement as provided by applicable UTA records retention requirements. If you fail to comply with this Section, UTA may terminate the Agreement without further obligation or penalty if You fail to cure the violation on or before the tenth (10th) business day after receiving written notice from UTA of Your breach.
- 12.17.** The foregoing representations, covenants, certifications, and warranties will survive acceptance of Goods as well as the completion of Services under this Agreement.
- 13. Relationship of the Parties.** For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, You are an independent contractor and not a state employee, partner, joint venturer, or agent of UTA. You will not bind nor attempt to bind UTA to any agreement

or contract. As an independent contractor, You are solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.

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

IN ADDITION, YOU WILL AND DO HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UTA, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY YOU, OR THE USE BY INDEMNITEES, AT YOUR DIRECTION, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UTA WILL PROMPTLY NOTIFY YOU AND YOU WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UTA AGREES TO REASONABLY COOPERATE WITH YOU. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

- 15. Insurance.** You, consistent with Your status as an independent contractor, ***and if applicable to the requirements of this Agreement as determined in writing by UTA***, will carry and will cause Your subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the *Texas Insurance Code*, having an A.M. Best Rating of A-:VII or better, and in amounts not less than the following minimum limits of coverage:

- 15.1. Workers' Compensation Insurance** with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

- Employers Liability – Each Accident \$1,000,000
- Employers Liability – Each Employee \$1,000,000
- Employers Liability – Policy Limit \$1,000,000

- 15.2. Commercial General Liability Insurance** with limits of not less than:

- Each Occurrence Limit \$1,000,000
- Damage to Rented Premises \$ 300,000
- Personal & Advertising Injury \$1,000,000
- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$2,000,000
- The required Commercial General Liability policy will be issued on a form that insures Your and Your subcontractor’s liability for bodily injury (including death), property damage, personal, and advertising injury assumed under the terms of this Agreement.

15.3. 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. If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy. Your transporting hazardous materials must provide the MCS-90 endorsement and CA9948 Broadened Pollution Liability endorsement on the Business Auto Liability policy. Policy limits must be in line with Federal requirements.

15.4. Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000. The Umbrella/Excess Liability policy will be excess over and at least as broad as the underlying coverage as required under Employer’s Liability; Commercial General Liability; and Business Auto Liability. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

15.5. Professional Liability (Errors & Omissions) Insurance with limits of not less than \$1,000,000 each occurrence, \$3,000,000 aggregate. Such insurance will cover all Work performed by or on behalf of You and Your subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, You agree to purchase an Extended Reporting Period Endorsement, effective twenty-four (24) months after the expiration or cancellation of the policy. No Professional Liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least twenty-four (24) months after the expiration or termination of this Agreement for any reason.

15.6. If this Agreement allows You electronic access (hosting, collecting, storing, transmitting or otherwise) to Confidential Information that is protected by breach notification laws (for example Sensitive Personal Information under Chapter 521, Texas Business and Commerce

Code. You are required to carry **Cyber Liability Insurance** with limits of not less than \$10,000,000 for each wrongful act. This policy must cover:

- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of UTA data, whether by You or any of Your subcontractors or cloud service providers used by You;
 - Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management/public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
 - Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
 - Liability for technological products and services;
 - PCI fines, fees, penalties and assessments;
 - Cyber extortion payment and response costs;
 - First and Third-Party Business Interruption Loss resulting from a network security failure;
 - Liability for technological products and services;
 - Costs of restoring, updating or replacing data; and
 - Liability losses connected to network security, privacy, and media liability.
- 15.7.** If any policy is written on a claims-made basis, (1) the “retroactive date” must be prior to the commencement of Services under this Agreement; and (2) if this policy is cancelled, terminated or non-renewed at any time during the Term, You will purchase an “extended reporting period” for at least a period of two (2) years beyond the termination or expiration of the Agreement.
- 15.8.** After the execution and delivery of this Agreement and prior to the performance of any Services by You, You will deliver to UTA evidence of insurance on a Texas Department of Insurance (“TDI”) approved certificate form (the Acord form is a TDI-approved form) verifying the existence and actual limits of all required insurance policies; and, if the coverage period shown on the current certificate form ends during the term of this Agreement, then prior to the end of the coverage period, a new certificate form verifying the continued existence of all required insurance policies.

- 15.9. All insurance policies** (with the exception of workers' compensation, employer's liability and professional liability) will be endorsed and name the Board of Regents of The University of Texas System, The University of Texas System, and UTA as Additional Insureds for liability caused in whole or in part by Your acts or omissions with respect to Your on-going and completed operations up to the actual liability limits of the required insurance policies maintained by You. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.
- 15.10.** You hereby waive all rights of subrogation against the Board of Regents of The University of Texas System, The University of Texas System, and UTA. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System, The University of Texas System, and UTA. No policy will be canceled until after thirty (30) days' unconditional written notice to UTA. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to UTA thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required under this Agreement.
- 15.11.** You will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by UTA prior to the performance of any Services provided under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
- 15.12.** Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the UTA address in the Notices Section of these UTATC.
- 15.13.** Yours or Your subcontractor's insurance will be primary to any insurance carried or self-insurance program established by UTA or Yours or Your subcontractor's insurance will be kept in force until all Work has been fully performed and accepted by UTA in writing.
- 16. Assignment and Delegation.** You may not assign any of Your rights or delegate any of Your obligations under this Agreement without UTA's prior written consent. Any assignment or delegation attempted by You in violation of this clause will be void and ineffective for all purposes.
- 17. Subcontracting.** With respect to Agreements with an expected value of \$100,000 or more over the life of the Agreement, including any renewals, You will use good faith efforts to subcontract the Goods and/or Services performed under this Agreement in accordance with Your Historically Underutilized Business Subcontracting Plan ("HSP") submitted in connection with this Agreement, if any. Except as specifically provided in the HSP, You will not subcontract any of Your duties or obligations under this Agreement, in whole or in part. *If applicable*, this Agreement is subject to 34 *Texas Administrative Code* Section 20.14. You will comply with all of its duties and obligations under 34 *Texas Administrative Code* Section 20.14. In addition to other rights and remedies, UTA

may exercise all rights and remedies authorized by 34 *Texas Administrative Code* Section 20.14, when appropriate.

18. **Loss of Funding.** Performance by UTA under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”) and/or allocation of funds by The University of Texas System Board of Regents (the “Board”). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then UTA will issue written notice to You and UTA may terminate this Agreement without further duty or obligation hereunder. You acknowledge that appropriation, allotment, and allocation of funds are beyond the control of UTA.
19. **State Auditor’s Office.** You understand 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 Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. You agree to cooperate with the Auditor in the conduct of the audit or investigation, including providing all records requested. You will include this provision in all contracts with Your subcontractors.
20. **Ethics Matters; No Financial Interest.** You and Your employees, agents, representatives and subcontractors have read and understand UTA’s Conflict of Interest Policy 5-508; UTA’s Standards of Conduct Guide and applicable state ethics laws and rules, all of which may be found at: <https://www.uta.edu/business-affairs/hub/>. Neither You nor Your employees, agents, representatives or subcontractors will assist or cause UTA employees to violate UTA’s Conflict of Interest Policy, provisions described by UTA’s Standards of Conduct Guide, or applicable state ethics laws or rules. You represent and warrant that no member of The University of Texas System Board of Regents has a direct or indirect financial interest in the transaction that is subject of this Agreement.
21. **Notices.** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via registered or certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (1) if delivered by registered or certified mail, return receipt requested, when deposited, postage prepaid, in the United States mail, or (2) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), when received:

If to UTA:

The University of Texas at Arlington
Procurement Services
Box 19135
Arlington, Texas 76019
Fax: 817-272-2685

Email: 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, 87th 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 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.

- 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.**

