

**EAST TEXAS A&M UNIVERSITY
BID TERMS AND CONDITIONS**

The following East Texas A&M University (hereafter referred to as "ETAMU"), an agency of the state of Texas, terms and conditions shall be incorporated into and form a part of any resultant agreement ("Purchase Order" or "Agreement") issued as a result of this Invitation to Bid (Bid). The vendor responding to this Bid shall be hereafter referred to as "RESPONDENT" or "PROVIDER". The Purchase Order along with this Exhibit A shall constitute the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of the Purchase Order. The Purchase Order may not be amended or otherwise altered except by an authorized purchasing agent of the ETAMU.

1. Conditions and Requirements

- 1.1 Bid prices are to be firm for 30 days from bid opening date unless stated otherwise within the Bid Prerequisites. "Discount from list" bids are not allowed unless requested within the Bid Prerequisites or specifications.
- 1.2 Bid cannot be altered or amended after Bid open date and time. No bid can be withdrawn after the Bid open date and time without approval by ETAMU Office of Procurement Services based on a written acceptable reason.
- 1.3 ETAMU reserves the right to accept or reject all or any part of any bid, waive minor technicalities and award the bid to best serve the interests of the ETAMU.

2. Specifications

- 2.1 Unless otherwise specified, items shall be new and unused and of current production.
- 2.2 No substitutions are permitted unless otherwise stated within the Bid and/or specifications, or through an addendum issued as part of the Bid.
- 2.3 As applicable, all electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
- 2.4 ETAMU will not be bound by any oral statement or representation contrary to the written specifications.

3. Delivery

Bid responses shall include estimated delivery time for the item(s) being offered. If delay is foreseen, RESPONDENT shall give written notice to ETAMU. ETAMU has the right to extend delivery date for valid reasons. Delivery shall be made during normal working hours only, unless prior approval for late delivery has been obtained from ETAMU.

4. Insurance

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

A. Worker's Compensation

Worker's compensation insurance with the following minimum limits of coverage:

Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit

Workers' compensation policy must include under Item 3.A., on the information page of the workers' compensation policy, the state in which work is to be performed for ETAMU. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

B. Automobile Liability

Business auto liability insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 combined single limit of liability per accident for bodily injury and property damage.

C. Commercial General Liability

Commercial general liability insurance with the following minimum limits of coverage:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy must be issued on a form that insures PROVIDER's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of any resultant Purchase Order.

D. Excess/Umbrella Liability Insurance

PROVIDER shall maintain excess/umbrella liability insurance providing coverage in excess of all insurance required under any resultant Purchase Order. Such coverage shall apply on a follow-form basis, or at a minimum, provide coverage no less broad than the underlying primary policies, including coverage for additional insureds where required. The policy shall be written with limits sufficient to ensure a combined total limit of not less than \$5,000,000 per occurrence and in the aggregate, as applicable, for the underlying policies.

- 4.2 PROVIDER shall deliver to ETAMU the evidence of insurance on a Texas Department of Insurance approved certificate form, Acord form, letter of self-insurance or its equivalent verifying the existence and actual limits of all insurance prior to the execution and delivery of any resultant Purchase Order and prior to the performance of any services and/or Services by PROVIDER under the Purchase Order. PROVIDER shall provide additional evidence of insurance on an approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.
- 4.3 Commercial General Liability and Auto Liability policies must be endorsed to name the Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and its member institutions, universities, and agencies as additional insureds up to the actual liability limits of the policies maintained by PROVIDER. The commercial general liability additional insured endorsements must include on-going and completed operations. Commercial general liability and business auto liability policies must be written on a primary and non-contributory basis. Copies of each endorsement must be submitted with the certificate of insurance upon request.
- 4.4 PROVIDER hereby waives any and all rights of subrogation against the Board of Regents, The Texas A&M University System and its member institutions, universities, and agencies. All insurance policies must be endorsed to provide a waiver of subrogation in favor of the Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and its member institutions, universities, and agencies. Vendor's waiver under this Section shall apply regardless of whether Vendor has obtained the required waiver of subrogation endorsement from its insurer.
- 4.5 PROVIDER shall send written notice to Certificate Holder ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required hereunder.
- 4.6 PROVIDER shall pay any deductible or self-insured retention for any loss.
- 4.7 Certificates of insurance and additional insured endorsements as required by any resultant Purchase Order must be submitted/mailed to the following Certificate Holder and/or ETAMU System contact:

Certificate Holder:
East Texas A&M University
2600 W. Neat St.
Commerce, TX 75428
Email Address: purchasing@etamu.edu

4.8 The insurance coverage required by any resultant Purchase Order must be kept in force until all services and/or Services have been fully performed and accepted by ETAMU in writing.

4.9 ETAMU reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5. **Award of Contract.** A response to a formal request for bids is an offer to contract based upon the terms, conditions and specifications contained herein. Bids do not become contracts until they are accepted through an executed Agreement or ETAMU Purchase Order.

6. **Default and Termination**

6.1 In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, ETAMU may terminate the resulting Purchase Order upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of ETAMU.

6.2 ETAMU may terminate the resulting Purchase Order at any time upon thirty (30) days prior notice to PROVIDER.

7. **Compliance with Laws.** Each Party shall comply with all federal, state, and local laws, executive orders, rules, and regulations applicable to the performance of its obligations under this Agreement.

SITUATIONAL: Include the following provision if PROVIDER will be creating, accessing, receiving or maintaining personal identifiable information on ETAMU's behalf:

8. **Data Privacy.** PROVIDER shall hold ETAMU's data in confidence. PROVIDER shall only use or disclose ETAMU's data for the purpose of fulfilling PROVIDER's obligations under this Agreement, as required by law, or as otherwise authorized in writing by ETAMU. PROVIDER shall restrict disclosure of the ETAMU's data solely to those employees, subcontractors or agents of PROVIDER that have a need to access the ETAMU's data in order for PROVIDER to perform its obligations under this Agreement. PROVIDER shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on PROVIDER in this Agreement.

PROVIDER shall, within two (2) days of discovery, report to ETAMU any use or disclosure of ETAMU's data not authorized by this Agreement or in writing by ETAMU. PROVIDER's report must identify: (a) the nature of the unauthorized use or disclosure, (b) the ETAMU data used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure, (d) what PROVIDER has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action PROVIDER has taken or will take to prevent future similar unauthorized use or disclosure. PROVIDER shall provide such other information, including a written report, as reasonably requested by ETAMU.

PROVIDER must promptly notify ETAMU of any legal request for ETAMU's data from a third party and take (and assist ETAMU in taking) appropriate steps not to disclose such ETAMU data.

Within thirty (30) days of the expiration or termination of this Agreement, PROVIDER, as directed by ETAMU, shall return all ETAMU data to ETAMU in its possession (or in the possession of any of its subcontractors or agents) or delete all such ETAMU data if return is not feasible. PROVIDER shall provide ETAMU with at least ten (10) days' written notice of PROVIDER's intent to delete such ETAMU data and shall confirm such deletion in writing.

9. **Entire Agreement.** The Purchase Order, together with its exhibits, constitutes the entire and only agreement between the Parties relating to the subject matter hereof and supersedes any prior understanding, written or oral agreements between the Parties, or "side deals" which are not described in the Purchase Order. The Purchase Order may be amended only by a subsequent written agreement signed by authorized representatives of both Parties.

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

11. **Indemnification.** Subject to the statutory duties of the Texas Attorney General, PROVIDER shall indemnify, defend and hold

harmless ETAMU, A&M System, and their regents, employees and agents (collectively, the “ETAMU Indemnitees”) from and against any third-party claims, demands, damages, liabilities, expense or loss asserted against ETAMU Indemnities (each, a “Claim”) arising out of or related to (i) an allegation that any of the Services infringe upon, misappropriate, or otherwise violate the intellectual property rights of a third party; (ii) PROVIDER’s breach of any certification, representation, or warranty contained in this Agreement; or (iii) any acts or omissions of PROVIDER or its employees or agents pertaining to the activities and obligations under this Agreement, except to the extent such Claim arises from an ETAMU Indemnitee’s gross negligence or willful misconduct.

12. **Independent Contractor.** Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by PROVIDER’s service to ETAMU. Except as specifically required under the terms of this Agreement, PROVIDER (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of ETAMU or the A&M System. As an independent contractor, PROVIDER is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers’ compensation insurance. PROVIDER and its employees shall observe and abide by all applicable policies, regulations, rules and procedures of ETAMU and A&M System, including those applicable to conduct on its premises.
13. **No Impediments.** PROVIDER represents and warrants that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent PROVIDER’s performance of the Services.
14. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of ETAMU. Any purported assignment in violation of this paragraph will be void.
15. **Non-Waiver of Defaults.** The failure of either Party at any time to require performance by the other Party of any provision of this Agreement will in no way affect the right to require such performance at any time thereafter nor will the waiver by either Party of a breach of any provision be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.
16. **Organization.** If PROVIDER is a business entity, PROVIDER warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of PROVIDER has been duly authorized to act for and bind PROVIDER. Upon ETAMU’s request, PROVIDER shall promptly deliver to ETAMU (i) a certificate of good standing certified by the appropriate governmental officer in its jurisdiction of incorporation or organization; and (ii) a certificate of fact issued by the Texas Secretary of State.
17. **Refund of Deposit/Prepayment.** In the event this Agreement is canceled and/or terminated by PROVIDER for reason not attributable to ETAMU or if canceled and/or terminated by ETAMU for default of performance by PROVIDER, then within thirty (30) days after cancellation and/or termination, PROVIDER will reimburse ETAMU for all advance payments paid by ETAMU to PROVIDER that were (i) not earned by PROVIDER prior to cancellation and/or termination, or (ii) for goods or services that the ETAMU did not receive from PROVIDER prior to cancellation and/or termination.
18. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.
19. **Survival.** Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.
20. **U.S. Currency.** All amounts payable hereunder shall be paid in United States dollars.
21. **Use of Name.** Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its “Marks”), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading. The Parties will mutually agree in advance upon any public announcements, or communications to the media regarding this Agreement or the goods or services to be provided pursuant to this Agreement.

SITUATIONAL: Include the following provision if ETAMU will obtain electronic and Information resources from PROVIDER:

22. **Access by Individuals with Disabilities.** PROVIDER represents and warrants that the goods and services provided hereunder comply with the accessibility requirements in Title 1, Chapters 206 and 213 of the Texas Administrative Code and Title II of the Americans with Disabilities Act and the technical standards set forth in the Web Content Accessibility Guidelines 2.1, level AA (available at <http://w3.org/TR/WCAG21>), as published by the Web Accessibility Initiative of the World Wide Web Consortium (the "Accessibility Warranty"). PROVIDER shall promptly respond to and use commercially reasonable efforts to resolve and remediate any noncompliance with the Accessibility Warranty. In the event that PROVIDER fails or is unable to do so, ETAMU may immediately terminate this Agreement, and PROVIDER will refund to ETAMU all amounts prepaid by ETAMU under this Agreement within thirty (30) days following the effective date of termination.

SITUATIONAL: Include the following provision if PROVIDER is authorized to access, transmit, use or store ETAMU's data:

23. **Access to Agency Data.** Pursuant to Section 2054.138, Texas Government Code, PROVIDER shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, the security control baseline required by the then-current risk and authorization management program established by the Texas Department of Information Resources ("TX-RAMP"), to safeguard and preserve the confidentiality, integrity, and availability of ETAMU's data ("Security Controls"). Upon written request by ETAMU, PROVIDER shall provide ETAMU with evidence or a copy of the certification of its compliance with the Security Controls within thirty (30) days of such request.

SITUATIONAL: Include the following provision if ETAMU procures cloud-computing services from PROVIDER:

24. **Cloud Computing Services.** As of the Effective Date, PROVIDER certifies that it complies with the then-current requirements of TX-RAMP. Pursuant to Section 2063.408, Texas Government Code, PROVIDER shall maintain TX-RAMP compliance and certification, as may be amended from time to time, throughout the Term, including any renewal term of this Agreement. PROVIDER shall provide ETAMU with evidence of its TX-RAMP compliance and certification within thirty (30) days of ETAMU's request and at least thirty (30) days prior to the start of any renewal term of this Agreement. In the event that PROVIDER fails to maintain TX-RAMP compliance and certification throughout the Term, including any renewal term, ETAMU may immediately terminate this Agreement, and PROVIDER will provide a refund to ETAMU of any prepaid fees.

SITUATIONAL: Include the following provision if PROVIDER will have access to ETAMU's computer system or database:

25. **Cybersecurity Training Program.** Pursuant to Section 2063.104, Texas Government Code, PROVIDER and its employees, officers, and subcontractors who have access to ETAMU's computer system and/or database must complete a cybersecurity training program certified under Section 2063.104, Texas Government Code, and selected by ETAMU. The cybersecurity training program must be completed by PROVIDER and its employees, officers, and subcontractors during the term of this Agreement and any renewal period of this Agreement. PROVIDER shall verify completion of the program in writing to ETAMU within the first thirty (30) calendar days of the initial term and any renewal period of this Agreement. PROVIDER acknowledges and agrees that its failure to comply with the requirements of this Section are grounds for ETAMU to terminate this Agreement for cause.
26. **Prohibited Technologies.** PROVIDER certifies that it is not: (a) an entity listed on the Higher Education Research Security Council's list of prohibited software/applications/developers at <https://www.highered.texas.gov/prohibited-software-applications-developers/> (the "HERSC List"), or a subsidiary or affiliate of such an entity, or (b) providing, under this Agreement, software that is either on or provided by an entity on the HERSC List. PROVIDER acknowledges this Agreement may be terminated for cause immediately if this certification is inaccurate.
27. **Conflict of Interest.** PROVIDER certifies, to the best of their knowledge and belief, that no member of the ETAMU's Board of Regents, nor any officer of ETAMU, has a direct or indirect financial interest in PROVIDER or in the transaction that is the subject of any resultant Agreement.
28. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, Texas Family Code, PROVIDER certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.
29. **Dispute Resolution.** To the extent that Chapter 2260, Texas Government Code is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to

Chapter 2260, shall be used by ETAMU and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to the Contracts Officer of ETAMU, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim. This provision and nothing in this Agreement waives ETAMU's sovereign immunity to suit or liability, and ETAMU has not waived its right to seek redress in the courts.

30. Executive Order GA-43. To the extent that PROVIDER is providing goods to ETAMU under this Agreement, PROVIDER represents and warrants that the goods are not produced in or exported from the Gaza Strip or from any organization or state actor with ties to Hamas.

31. Executive Order GA-48. PROVIDER represents and warrants that PROVIDER is not and, if applicable, none of its holding companies or subsidiaries are (i) listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA") regarding telecommunications and video surveillance; (ii) listed in Section 1260H of the 2021 NDAA regarding Chinese military companies in the US; (iii) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4 ("15 C.F.R. § 791.4 List"); or (iv) controlled by any governing or regulatory body located in a country on the 15 C.F.R. § 791.4 List. PROVIDER acknowledges that a false certification is a material breach of contract and is grounds for immediate termination of this Agreement with no further obligation on the part of ETAMU or the A&M System. If this Agreement is terminated due to a false certification, PROVIDER will immediately reimburse ETAMU for all prepaid costs.

32. Export Control.

If contracting with a U.S. entity. Each Party shall comply with U.S. export control regulations. If either Party desires to disclose to the other Party any information, technology, or data that is identified on any U.S. export control list, the disclosing Party shall advise the other Party at or before the time of intended disclosure and may not provide export-controlled information to the other Party without the written consent of the other Party. PROVIDER certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

If contracting with a foreign entity. ETAMU is subject to United States laws and regulations controlling the export of technical data, software, laboratory prototypes, and other commodities, and its obligations under this Agreement are contingent on compliance with applicable laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States government or written assurances by PROVIDER that PROVIDER will not export data or commodities to certain countries without advance approval of that agency. ETAMU neither represents that a license will not be required nor that, if required, it will be issued. PROVIDER shall comply with all applicable export laws and regulations and may not export or allow the export or re-export of commodities or technical data in violation of those laws or regulations. PROVIDER certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

SITUATIONAL: Include the following provision if ETAMU engages PROVIDER to create, access, receive or maintain student education records under FERPA's school official exception:

33. FERPA. For purposes of the Family Educational Rights and Privacy Act ("FERPA"), ETAMU hereby designates PROVIDER as a school official with a legitimate educational interest in any education records (as defined in FERPA) that PROVIDER is required to create, access, receive, or maintain to fulfill its obligations under this Agreement. PROVIDER shall comply with FERPA as to any such education records and is prohibited from redisclosure of the education records except as provided for in this Agreement or otherwise authorized by FERPA or ETAMU in writing. PROVIDER is only permitted to use the education records for the purpose of fulfilling its obligations under this Agreement and shall restrict disclosure of the education records solely to those employees, subcontractors or agents who have a need to access the education records for such purpose. PROVIDER shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on PROVIDER in this Section, including without limitation, the prohibition on redisclosure. PROVIDER shall implement and maintain reasonable administrative, technical, and physical safeguards to secure the education records from unauthorized access, disclosure or use.

34. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
35. **Governing Law and Venue.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, nonperformance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas. Pursuant to Section 85.18(b), Texas Education Code, mandatory venue for all legal proceedings against ETAMU is to be in the county in which the principal office of ETAMU's governing officer is located.
36. **Limitations.** As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of ETAMU to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on ETAMU's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Terms and conditions related to the Limitations will not be binding on ETAMU except to the extent authorized by the Constitution and the laws of the state of Texas. Neither the execution of this Agreement by ETAMU nor any other conduct, action, or inaction of any representative of ETAMU relating to this Agreement constitutes or is intended to constitute a waiver of ETAMU's or the state's sovereign immunity.
37. **Loss of Funding.** Performance by ETAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, ETAMU will issue written notice to PROVIDER and ETAMU may terminate or cancel this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of ETAMU. In the event of a termination or cancellation under this Section, ETAMU will not be liable to PROVIDER for any damages that are caused or associated with such termination or cancellation.
38. **Not Eligible for Rehire.** PROVIDER is responsible for ensuring that its employees involved in any work being performed for ETAMU under this Agreement have not been designated as "Not Eligible for Rehire" as defined in A&M System policy 32.02, Discipline and Dismissal of Employees, Section 4 ("NEFR Employee"). In the event ETAMU becomes aware that PROVIDER has a NEFR Employee involved in any work being performed under this Agreement, ETAMU will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by ETAMU.

SITUATIONAL: Include the following provision if ETAMU engages PROVIDER to process, store, or transmit credit care information on ETAMU's behalf:

39. **Payment Card Industry (PCI) Compliance.** For purposes of this Agreement, "PCI DSS" means the most current version of the Payment Card Industry Data Security Standard administered by the Payment Card Industry Security Standards Council. PROVIDER acknowledges and agrees that it is responsible for the security of cardholder data it possesses or otherwise stores, processes or transmits on behalf of ETAMU, or to the extent that PROVIDER could impact the security of the cardholder data environment and agrees as follows:
- (i) PROVIDER represents and warrants that, as of the Effective Date of this Agreement, it has complied with all PCI DSS requirements and has performed the necessary steps to validate its compliance with PCI DSS. PROVIDER shall maintain such compliance for the term of this Agreement and send documentation of its most recent validation of compliance to ETAMU annually during the term of this Agreement. In the event that PROVIDER learns that it is no longer PCI DSS compliant, PROVIDER will notify ETAMU within two (2) business days of discovery and immediately remediate such non-compliance.
 - (ii) PROVIDER acknowledges that unauthorized access to the cardholder data environment (a "cardholder data breach") resulting from a lapse in PROVIDER's security obligations is grounds for early termination of this Agreement, without penalty and with immediate effect, at ETAMU's discretion. PROVIDER agrees to comply with all laws, rules, and regulations applicable to cardholder data services, including without limitation, those laws requiring notification of individuals in the event of a cardholder data breach.
 - (iii) PROVIDER agrees to indemnify and hold harmless ETAMU from and against any third-party claims, damages, or other harm related to a cardholder data breach. This provision survives termination of this Agreement.
40. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain

debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

41. **Prior Employment.** PROVIDER acknowledges that Section 2252.901, Texas Government Code, prohibits ETAMU from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement. If PROVIDER is an individual, by signing this Agreement, PROVIDER represents and warrants that it is not a former or retired employee of A&M System that was employed by A&M System during the twelve (12) month period immediately prior to the effective date of the Agreement.
42. **Prompt Pay.** ETAMU's payment shall be made in accordance with Chapter 2251, Texas Government Code (the "Texas Prompt Payment Act"), which shall govern remittance of payment and remedies for late payment and non-payment.
43. **Public Information.** PROVIDER acknowledges that ETAMU is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Bid or any resultant agreement, as well as any other disclosure of information required by applicable Texas law. Upon ETAMU's written request, PROVIDER will promptly provide specified contracting information exchanged or created under any resultant agreement for or on behalf of ETAMU to ETAMU in a non-proprietary format acceptable to ETAMU that is accessible by the public. PROVIDER acknowledges that ETAMU may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to any resultant Agreement and PROVIDER agrees that the Agreement can be terminated if PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

SITUATIONAL: Include the following provision if PROVIDER is not a governmental body and the contract (1) has a stated expenditure of at least \$1 million; or (2) results in the expenditure of at least \$1 million in a fiscal year.

44. **Record Retention.** To the extent that Section 552.372, Texas Government Code applies to this Bid and any resultant Agreement, PROVIDER must (i) preserve all "contracting information", as defined under Section 552.003(1-a), Texas Government Code, related to the Agreement for the duration of the Agreement as provided by the ETAMU records retention requirements; (ii) promptly provide to ETAMU any contracting information related to the Agreement that is in the custody or possession of PROVIDER on request of ETAMU; and (iii) on completion of the Agreement, either (a) provide at no cost to ETAMU, all contracting information related to the Agreement that is in the custody or possession of PROVIDER, or (b) preserve the contracting information related to the Agreement for seven (7) years after the conclusion of the Agreement as provided by the ETAMU's records retention requirements. Furthermore, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the Agreement, and PROVIDER agrees that the Agreement can be terminated if PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.
45. **State Auditor's Office.** PROVIDER understands that acceptance of funds under any resultant Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
46. **Tax Exempt Status.** As an agency of the State of Texas ETAMU is tax exempt. Tax exemption certification will be furnished to PROVIDER upon request.
47. **Prohibition on Contracts with Companies Engaging in Business with Certain Countries and Organizations.** PROVIDER certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, Texas Government Code. PROVIDER acknowledges this Agreement may be terminated for cause immediately if this certification is inaccurate.

SITUATIONAL: The following three provisions can be deleted if any of the following circumstances are true: (1) PROVIDER is an individual, (2) PROVIDER is a business with less than 10 employees, or (3) Agreement has a value of less than \$100,000

48. **Prohibition on Contracts with Companies Boycotting Energy Companies.** To the extent that Chapter 2276, Texas Government Code, is applicable to this Agreement, PROVIDER certifies that (i) it does not boycott energy companies, and (ii) it will not boycott energy companies during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.

49. **Prohibition on Contracts with Companies Boycotting Israel.** To the extent that Chapter 2271, Texas Government Code, is applicable to this Agreement, PROVIDER certifies that (i) it does not currently boycott Israel, and (ii) it will not boycott Israel during the term of this Agreement. PROVIDER acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.
50. **Prohibition on Contracts with Companies Discriminating Against Firearm Entities and Trade Associations.** To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, PROVIDER certifies that (i) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (ii) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. PROVIDER acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.
51. **Vendor Affirmation.** Submitting a Bid with a false statement may void the submitted Bid response or any resultant Agreements or other contractual arrangements. A false certification shall be deemed a material breach of contract and, at ETAMU's option, may result in termination of any resulting Agreement or Purchase Order.

By submission of a Bid response, the Respondent hereby certifies as follows, and acknowledges that such certifications will be included in any resultant Purchase Order or Agreement:

- (i) the Bid response and all statements and information prepared and submitted in response to this RFP are current, complete, true and correct;
- (ii) it is not given, nor intends 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 the submitted response or any subsequent proposal. Failure to sign below, or signing a false statement, may void the response or any resulting contracts at ETAMU's option, and the Respondent may be removed from all future proposal lists at this state agency;
- (iii) the individual signing this document and the documents made part of the RFP is authorized to sign such documents on behalf of the Respondent and to bind the Respondent under any contract which may result from the submission of the Response;
- (iv) no relationship, whether as a relative, business associate, by capital funding agreement or by any other such kinship exists between Respondent and an employee of ETAMU;
- (v) Respondent has not been an employee of A&M System within the immediate twelve (12) months prior to the RFP response;
- (vi) no compensation has been received for participation in the preparation of this RFP (ref. Section 2155.004 Texas Government Code);
- (vii) all services to be provided in response to this RFP will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health law (Public Law 91-596) and its regulations in effect as of the date of this solicitation;
- (viii) Respondent complies with all federal laws and regulations pertaining to Equal Employment Opportunities;
- (ix) to the best of its knowledge, no member of the Board of Regents of The Texas A&M University System, or the Executive Officers of the Texas A&M University System or its member institutions or agencies, has a financial interest, directly or indirectly, in the Solution;
- (x) if the Respondent is subject to the Texas franchise tax, it is not currently delinquent in the payment of any franchise tax due under Chapter 171, Texas Tax Code, or is exempt from the payment of such taxes. A false certification may result in the Respondent's disqualification;
- (xi) under Section 231.006, Family Code, the Respondent or applicant certifies that the individual or business entity named in this RFP, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that any resultant agreement may be terminated and payment may be withheld if this certification is inaccurate;
- (xii) under Section 2155.006, Government Code, the Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that any resultant agreement may be terminated and payment withheld if this certification is inaccurate;

- (xiii) under Section 2155.0061, Texas Government Code, the Respondent certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate; and,
- (xiv) Respondent warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver this RFP and any contract which may result from the submission of the Response.