**MASTER SERVICES AGREEMENT**

This Agreement is made and entered into by and between Texas Woman’s University, a public university organized under Chapter 107 of the Texas Education Code, whose main office address is at 304 Administration Drive, Denton TX. 76201 ("University" or “TWU”), for and on behalf of the **insert University/School and/or budgeted department name** (“Department”), and **insert legal name of Contractor** ("Contractor") a **insert type of business structure such as corporation, limited liability company, or partnership** with its principal place of business at **insert street address, city, state, zip code.**

1. **CONTRACTED SERVICES**
2. **Contractor Services.** Contractor will provide the services as set forth in **Exhibit A**, Statement of Work, attached hereto and incorporated for all purposes (the “Services”), to the satisfaction of University.
3. **Term and Termination.** **Choose the proper dates / number of days below.**

This Agreement will commence on Effective Date (the “Effective Date”) and end End Date. This Agreement may be terminated for convenience by either Party with or without cause upon thirty (30) days prior written notice to the other Party.

In the event of termination without cause, University shall pay the Contractor any undisputed amounts not previously paid for Services actually performed in accordance with specifications in the Engagement, up to the date of termination.

Performance of this Agreement is contingent upon the availability of appropriated funds from the Texas State Legislature or allocation of funds by the TWU Board of Regents. University shall have the right to cancel the Agreement at the end of the current fiscal year if funds are not allotted by the Board for the next fiscal year to continue the Agreement or funds are not appropriated by the Legislature. If funds are withdrawn or do not become available, University reserves the right to terminate the Agreement by giving the Contractor a ten (10) day written notice of cancellation without penalty. Upon cancellation, University shall be responsible only for payment for services actually performed up to the date of termination. The TWU fiscal year begins on September 1 and ends on August 31st.

This Agreement may be terminated by either Party in the event of breach of this Agreement by the non-terminating party. A breach occurs when either Party fails to perform its obligations under this Agreement or fails to comply with the terms of this Agreement. In the event of a breach, the Party claiming such breach shall provide the other Party with written notice of such breach setting forth the basis for such claim of breach. The breaching Party shall have reasonable opportunity or thirty (30) days from the receipt of the notice of breach, whichever is shorter, to cure such breach. If the breaching Party fails to cure the breach within a reasonable time, not to exceed thirty (30) days of receipt of the notice, the aggrieved Party shall have the right to terminate the Agreement immediately and pursue any remedies available under law for breach of contract

This contract may be renewed by written consent of both parties.

1. **Compensation.** TWU will compensate Contractor a total compensation of **$\_\_\_\_\_\_\_\_\_\_\_\_**, which includes all expenses (“Fee”) in exchange for the performance of work outlined in **Exhibit A**. Contractor shall submit detailed invoices describing the services rendered the person or persons rendering such services, the charges therefore, the times when such services were performed, compensable expenses and the amount due. TWU will make payment in compliance with the rules governing payments of state agencies as outlined by the Texas Comptroller. Notwithstanding anything contained herein, no payment of amounts owed hereunder shall be considered past due or not paid when due except in accordance with Section 2251.021 of the Texas Government Code.

**Maximum Contract Value**. The amount contained herein is the maximum contract value. If additional funding is required, it will be processed pursuant to the prior written approval of TWU. The delivery of any services undertaken by the Contractor, prior to receipt of any written approval by TWU, will be at the Contractors sole risk and expense.

1. **Invoicing. Choose one provision below and delete the other.**

Upon completion of a phase (deliverable, task, item, etc) and acceptance by University, Contractor will submit an invoice setting forth amounts due to Contractor. Each invoice will be accompanied by documentation that University may reasonably request to support the invoice amount. University will, within thirty (30) days from the date it receives an invoice and supporting documentation, approve or disapprove the amount reflected in the invoice. If University approves the amount or any portion of the amount, University will promptly pay to Contractor the amount approved so long as Contractor is not in default under this Agreement. If University disapproves any invoice amount, University will give Contractor specific reasons for its disapproval in writing. Contractor will submit invoices to University as follows:

**Insert University contact name and complete address.**

**OR**

**Use the following if Contractor is paid on an hourly or flat fee basis.**

Contractor will submit monthly invoices to University. The invoices must be accompanied by a Time/Work Schedule for each Contractor employee contributing to hours billed.

The Time/Work Schedule will contain the following information:

A. Name of individual performing the work;

B. Description of work performed and related Objective in Exhibit A; and

C. Date and number of hours worked.

Each invoice will be accompanied by documentation that University may reasonably request to support the invoice amount. University will, within thirty (30) days from the date it receives an invoice and supporting documentation, approve or disapprove the amount reflected in the invoice. If University approves the amount or any portion of the amount, University will promptly pay to Contractor the amount approved so long as Contractor is not in default under this Agreement. If University disapproves any invoice amount, University will give Contractor specific reasons for its disapproval in writing. Contractor will submit invoices to University as follows:

**Insert University contact name and complete address.**

1. **Default.** A party will be considered in default of its obligations under this Contract if such party should fail to observe, to comply with, or to perform any term or condition, contained in this Contract and such failure continues for ten (10) days after the non-defaulting party gives the defaulting party written notice thereof. In the event of a default, the non-defaulting party, upon written notice to the defaulting party, may terminate this Contract as of the date specified in the notice, and may seek such other and further relief as may be provided by law.
2. **Notice.** All Notices and communications regarding this agreement must be in writing and directed to the following representative:

For TWU For Contractor

Texas Woman’s University Contractor Name

Attn: Attn:

304 Administration Dr. Street Address

Denton, TX 76204 City, State, ZIP

For Legal Notices to TWU:

Texas Woman’s University

Office of General Counsel

304 Administration Dr.

Denton, TX 76204

1. **Licenses, Permits, Taxes, Fees, Laws and Regulations.** Contractor warrants that it will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for Contractor's performance of this Agreement.

Contractor will be responsible for the payment of all taxes, excises, fees, payroll deductions, employee benefits (if any), fines, penalties or other payments required by federal, state, or local law or regulation in connection with Contractor's performance of this Agreement.

Contractor will comply with, and will be responsible for requiring its officers and employees to comply with, all applicable federal, state, and local laws and regulations; applicable TWU board policies and relevant TWU procedures.

1. **Ownership and Use of Work Material. Choose one paragraph and delete the other.**

All drawings, specifications, plans, computations, sketches, data, records, photographs, tapes, renderings, models, publications, statements, accounts, reports, studies, and other materials prepared by Contractor or any Contractor’s subcontractor in connection with the Services (collectively, "Work Material"), whether or not accepted or rejected by University, are the sole property of University and for its exclusive use and re‑use at any time without further compensation and without any restrictions.

Contractor grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to the Work Material and will cooperate fully with University in any steps University may take to obtain or enforce patent, copyright, trademark or like protections with respect to the Work Material.

Contractor will deliver all Work Material to University upon expiration or termination of this Agreement. University will have the right to use the Work Material for the completion of the Services or otherwise. University may, at all times, retain the originals of the Work Material. The Work Material will not be used by any person or organization other than University on other projects unless expressly authorized by University in writing.

The Work Material will not be used or published by Contractor or any other party unless expressly authorized by University in writing. Contractor will treat all Work Material as confidential.

***OR***

**If Contractor owns instruction/presentation material, choose the following provision.**

Contractor warrants that it is the sole owner of the instruction/presentation materials or has obtained permission from the copyright holder to use the instruction/presentation materials and has full power and authority to make this agreement; that the instruction/presentation materials do not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter. Contractor will defend, indemnify, and hold harmless the University and/or its licensees against all claims, suits, costs, damages, and expenses that the University and/or its licensees may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the instruction/presentation materials or any infringement or violation by the instruction/presentation materials of any copyright or property right; and until such claim or suit has been settled or withdrawn, the University may withhold any sums due to Contractor under this Agreement.

1. **ADDITIONAL TERMS AND CONDITIONS**

**1. Independent Contractor.** For all purposes in this Agreement, Contractor hereby acknowledges that it is an independent contractor, and is not a state employee, partner, joint venture, or agent of TWU, and all persons employed to furnish services hereunder are employees of Contractor and not of TWU. As an independent contractor, Contractor will be solely responsible for determining the means and methods of performing the services described, in compliance with the provisions of this Agreement. All individuals performing services hereunder will be employees of Contractor and Contractor will pay for all wages, expenses, federal and state payroll taxes and any similar tax relating to such employees. Contractor shall observe and abide by, and cause its employees and agents to abide by, all applicable laws, regulations, policies and procedures, including without limitation those of TWU relative to conduct on its premises.

**2. Use of Name, Logos, Etc., in Advertising & Publicity.** Contractor agrees not to make reference to this Agreement or use the logo of TWU in any advertising material of any kind without the expressed written permission of TWU. Additionally, Contractor shall not use TWU's name, logo or likeness in any press release, marketing materials or other public announcement without receiving TWU's prior written approval.

**3. Insurance.** Contractor agrees to maintain, at Contractor’s sole expense, and provide proof of insurance meeting TWU’s Third Party Insurance Standards ([www.twu.edu/media/documents/risk-management/TWU-Third-Party-Insurance-Standards.pdf](http://www.twu.edu/media/documents/risk-management/TWU-Third-Party-Insurance-Standards.pdf)). By requiring such minimum insurance, TWU shall not be deemed or construed to have assessed the risk that may be applicable to the Contractor. Therefore, the Contractor shall assess its own risks and, if it deems appropriate, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or obligations assumed or pursuant to the contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. The Contractor’s failure to comply with the requirements of this section shall be considered a breach of this Agreement. Proof of insurance coverage is to be forwarded to TWU Risk Management by email at risk@twu.edu.

# The Contractor’s failure to comply with the requirements of this section shall be considered a breach of this Agreement.

# Proof of Insurance Coverage will be forwarded to:

 Insert University Contact Name (such as Department Contract Administrator) and complete address.

**4. University Insurance.** TWU is governed by the Texas Tort Claims Act, which sets forth certain limitations and restrictions on the types of liability and the types of insurance coverage that can be required of TWU. TWU represents to Contractor that it either has insurances policies in place or sufficient resources to self-insure for all claims for which it may be responsible under the Texas Tort Claims Act. TWU further represents to Contractor that it either has workers’ compensation insurance in the amount required by Texas statute or is entitled to self-insure for workers compensation coverage under Texas law and has elected to do so. TWU does not provide insurance coverage or accept liability for the intentional or negligent acts or omissions of guests, invitees, and other persons not employed by TWU.

**5. Sovereign Immunity.** Nothing in this Agreement shall be construed as a limitation or a waiver on any of the immunities or defenses to which TWU is entitled as an agency of the State of Texas. TWU enters this Agreement only to the extent authorized by applicable law. Any provision of this Agreement that is not authorized by or is inconsistent with applicable Texas law, including the opinions of the state’s Attorney General, is invalid.

**6. Contractor Indemnity.** Contractor shall indemnify, defend and hold TWU, its Regents, officers, employees and agents harmless from any and all manner of suits, claims or demands (1) arising out of or relating to Contractor’s, its employees’, agents’ and subcontractors’ acts or omissions arising under the performance of this Agreement; (2) the negligence or willful misconduct of Contractor, its agents, employees or subcontractors; (3) Contractor’s breach of any representation, warranty, covenant or other obligation hereunder; and (4) the infringement of any third party proprietary rights with respect to goods or services supplied to TWU in connection with this Agreement (each of which is an “Indemnifying Act”). Contractor shall reimburse TWU for any and all costs, damages and expenses including reasonable attorney’s fees to which TWU may be subject as a result of the occurrence of any Indemnifying Act. This provision shall survive any termination of this Agreement, and the indemnities described in this paragraph will not be subject to any liability caps stated anywhere in the Agreement.

**7. Taxes.** This Agreement shall not be construed so as to supersede the laws of the United States or the State of Texas that accord the State of Texas, Agency, and all departments, agencies, and instrumentalities of the State of Texas exemptions from the payment(s) of all taxes of whatever kind. More specifically, to the extent permitted by applicable law, TWU shall not directly or indirectly be liable for taxes of any kind. TWU shall provide all applicable tax exemption certificates upon Contractor’s request.

**8. Insolvency.** In the event of any proceedings in bankruptcy or insolvency by or against Contractor, or in the event of appointment (with or without Contractor’s consent) of an assignee for the benefit of creditors, or a receiver, TWU may terminate this Agreement without prior notice and without incurring any liability whatsoever to Contractor.

**9. Subject to Appropriation.** The parties acknowledge and agree that nothing in this Agreement will be interpreted to create a future obligation or liability in excess of the funds currently appropriated to the Agency.

**10. Texas Risk and Authorization Management (“TX-RAMP”) for Cloud-Based Software Services.** The parties hereby agree that if under this Agreement Contractor provides a cloud-based software offering which meets the criteria specified under the TX-RAMP Program (the “Subject Cloud Software”), the Subject Cloud Software is required to be TX-RAMP certified (which can be satisfied by specific product TX-RAMP certification, STATE-RAMP, FED-RAMP certification or another certification process approved by the State of Texas). Contractor must therefore comply with TX-RAMP, which is a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services that processes the data of a Texas state agency. Texas Government Code § 2054.0593 mandates that TWU must only enter or renew contracts to receive cloud computing services that comply with TX-RAMP requirements beginning January 1, 2022. Contractor hereby warrants that the Subject Cloud Software has received, and Contractor will maintain, the approvals required by TX-RAMP. TWU may immediately terminate this Agreement without penalty if Contractor’s certification herein is inaccurate or becomes inaccurate. The parties agree that additional cloud-based services or products may not be added under this Agreement, unless such additional cloud-based services or products are also approved as required by TX-RAMP. For avoidance of doubt, if no Subject Cloud Software is being provided under this Agreement, this paragraph is not applicable.

**11. Compliance with Specifications.** Contractorwarrants that all goods, services, or work supplied to TWU under this Agreement shall conform to specifications, drawings, samples, or other descriptions contained or referenced herein and shall be merchantable, of good quality and workmanship and free from defect. The Contractor also warrants that all goods and services covered by this Agreement which are the product of the Contractor are in accordance with its specifications and consistent with industry standards. For software and website services, Contractor warrants that it will (a) use commercially reasonable efforts commensurate with the severity of any malfunction, defect, error or non-conformity in the services to correct the issue; (b) maintain reasonable safeguards and controls designed to deter and designed for the detection, prevention and correction of any unauthorized intrusion, access or use of the software and/or website including without limitation Trojan, ransomware and copy protect mechanisms; (c) notify TWU of any successful unauthorized intrusion, access or use of the software and/or website which may have resulted in access to TWU’s information, or TWU users’ information, as soon as reasonably practicable; and (d) while the software and/or website used in the provision of services to TWU may continue to improve and change over time, such changes shall not materially adversely affect the functioning of the software. Neither receipt of goods or services nor payment therefore shall constitute a waiver of this provision.

**12. Access by Individuals with Disabilities.** As required by 1 TAC Chapter 213 and 1 TAC Section 206.70 (as authorized by Subchapter M, Chapter 2054, *Texas Government Code*, the “EIR Code”), Contractor represents and warrants (the “EIR Accessibility Warranty”) that any electronic and information resources and all associated information, documentation, and support that it provides to TWU under this Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in the EIR Code. To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents that it will, at no cost to TWU, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Contractor fails or is unable to do so, then TWU may terminate this Agreement and Contractor will refund to TWU all amounts TWU has paid under this Agreement within thirty (30) days after the termination date.

**13. Subcontracting.** In the event Contractor subcontracts for any of the performances herein, Contractor will require such subcontractors to comply with the provisions of this Agreement related to Section (B)(2) (Use of Name, Logos, Etc., in Advertising & Publicity), Section (B)(14) (Confidentiality and Safeguarding University Records), Section (B)(15) (FERPA), and Subsection (B)(17) (Non-Discrimination) of this Agreement. The parties agree that TWU shall not be liable to Contractor for any payments to such subcontractor or its employees or agents and that TWU shall not be directly liable in any manner to Contractor’s subcontractor(s). Contractor agrees to comply with all state and federal laws applicable to any of its subcontracting, including, but not limited to, laws regarding wages, taxes, insurance, historically underutilized businesses and workers’ compensation. In no event shall this section or any other provision of this Agreement be construed as relieving Contractor of the responsibility for ensuring that all performances rendered under this Agreement, and any subcontracts thereto, are rendered in compliance with all of the terms of this Agreement.

**14. Confidentiality and Safeguarding University Records.** Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of University, or (3) have access to, records or record systems (collectively, “University Records”). Among other things, University Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by applicable federal, state and local, laws, regulations, and ordinances, including the Gramm-Leach-Bliley Act (Public Law No: 106-102) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“FERPA”). If University Records are subject to FERPA, (1) University designates Contractor as a University official with a legitimate educational interest in University Records, and (2) Contractor acknowledges that its improper disclosure or redisclosure of personally identifiable information from University Records will result in Contractor’s exclusion from eligibility to contract with University for at least five (5) years. Contractor represents, warrants, and agrees that it will: (1) hold University Records in strict confidence and will not use or disclose University Records except as (a) permitted or required by this Agreement, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to commercially reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, the Gramm-Leach-Bliley Act, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than best practices in the data security industry; (3) continually monitor its operations and take any action necessary to assure that University Records are safeguarded and the confidentiality of University Records is maintained in accordance with all applicable federal, state and local, laws, regulations, and ordinances, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with the University’s rules, policies, and procedures regarding access to and use of University’s computer systems. At the request of University, Contractor agrees to provide University with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of University Records. Additional mandatory confidentiality and security compliance requirements with respect to University Records subject to FERPA are addressed below, where applicable.

**Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Contractor will provide written notice to University within one (1) business day after Contractor’s discovery of that use or disclosure. Contractor will promptly provide University with all information requested by University regarding the impermissible use or disclosure.

**Return of University Records.** Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all University Records created or received from or on behalf of University will be (1) returned to University, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any University Records, Contractor will provide University with written notice of Contractor’s intent to destroy University Records. Within five (5) days after destruction, Contractor will confirm to University in writing the destruction of University Records.

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

**15. FERPA.** For purposes of the Agreement and pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA) (20 U.S.C. §1232g; 34 CFR Part 99), TWU hereby designates Contractor as a school official with a legitimate educational interest in any educational records covered by the Agreement, only to the extent that access to the records are required by Contractor to carry out the purposes of the Agreement. Contractor agrees to maintain the confidentiality of the educational records in accordance with the provisions of FERPA.

**Confidential Student Information.** “Confidential Student Information” is defined as information that is personally identifiable to a student who is or was enrolled at University by any of the following means: the student’s name, the name of the student’s parent or other family members; the address of the student or student’s family; a personal identifier, such as a identification number, or biometric record; other indirect identifiers, including but not limited to the student’s date of birth, place of birth, and mother’s maiden name; or any other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community to identify the student with reasonable certainty and includes information supplied to Contractor by University as well as any information provided by University’s students and third parties to the Contractor.

Contractor acknowledges that this Agreement may allow the Contractor access to Confidential Student Information, and that access to and disclosure of Confidential Student Information is restricted by University policy and FERPA.

In the event that Contractor receives Confidential Student Information in the performance of this Agreement, Contractor agrees to hold Confidential Student Information in strict confidence. Contractor will not use or disclose Confidential Student Information received from or on behalf of University (or its students) except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by University. Contractor agrees not to use Confidential Student Information for any purpose other than the purpose for which the disclosure was made. Contractor agrees that only Contractor’s employees who have a legitimate business need in performing this Agreement will have access to the Confidential Student Information.

Upon termination, cancellation, expiration or other conclusion of the Agreement, Contractor will follow the provisions of the Return of University Records section above with regard to University Records protected by FERPA.

Contractor will develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Student Information received from, or on behalf of University or its students. These measures will be extended by contract to all subcontractors used by Contractor.

Contractor agrees that Contractor is under the direct control of University with respect to the use and maintenance of Confidential Student Information. If University reasonably determines in good faith that Contractor has materially breached any of its confidentiality obligations under this Agreement or has violated FERPA, University, in its sole discretion, will have the right to require Contractor to submit to a plan of monitoring and reporting; provide Contractor with a fifteen (15) day period to cure the breach; or terminate the Agreement immediately. Before exercising any of these options, University will provide written notice to Contractor describing the violation and the action it intends to take. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Contractor improperly disclosed personally identifiable information obtained from University’s education records, University may not allow the Contractor access to education records for at least five years.

Contractor will, within one day of discovery, report to University any use or disclosure of Confidential Student Information not authorized by this Agreement or in writing by University. Contractor’s report will identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Student Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or will take to prevent future similar unauthorized use or disclosure. Contractor will provide such other information, including a written report, as reasonably requested by University.

Contractor will indemnify, defend and hold University harmless from all claims, liabilities, damages, or judgments involving a third party, including University’s costs and attorney fees, which arise as a result of Contractor’s failure to meet or breach any of its obligations under this Agreement.

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

**16. Public Information.** TWU strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act (“TPIA”), Chapter 552, Texas Government Code. Nothing in this Agreement will be construed to prohibit disclosure of any information arising under the Agreement, including the Agreement itself, to the extent that such disclosure is required by law or valid order of a court or other governmental authority.

Contractor acknowledges that information created or exchanged between the parties during the performance of this Agreement may be subject to the TPIA, and may be subject to required disclosure in a publicly accessible format. Contractor agrees that it will exercise professional judgment and care when creating documents or other media intended to be confidential that may be subject disclosure under the TPIA and Contractor will mark documents or media it considers to be confidential as “confidential”. However Contractor understands that such marking is merely Contractor’s assertion of the information as confidential, that such marking is not binding on TWU, and that the parties must still comply with the TPIA requirements should the marked documents not be determined to meet the confidentiality standards under the TPIA or pursuant to decision or opinion by the any applicable court, other governmental authority, or the Texas Attorney General.

Contractor further acknowledges that “contracting information” is deemed to be public under the TPIA and TWU may not keep contracting information confidential as defined by TPIA § 552.0222.

**Delete the remainder of this section if the total amount paid under this Contract is not $100,000 or more.**

If the total amount paid to Contractor under this Contract by TWU equals one hundred thousand dollars ($100,000.00) or more, the Contractor must comply with applicable sections of the TPIA Section 552.371 in the performance of this Agreement, which requires Contractor to:

(1) preserve all contracting information related to the Agreement as provided by the records retention requirements applicable to TWU for the duration of the Agreement;

(2) promptly provide to TWU any contracting information related to the Agreement that is in the custody or possession of the Contractor on request of TWU; and

(3) on completion of the Agreement, either:

(A) provide at no cost to TWU all contracting information related to the Agreement that is in the custody or possession of the Contractor; or

(B) preserve the contracting information related to the Agreement as provided by the records retention requirements applicable to TWU.

As required by the TPIA, Contractor hereby acknowledges the following:

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

Further, in addition to the possible termination of the Agreement, Contractor acknowledges that failure to comply with the requirements of the TPIA may negatively affect Contractor’s eligibility to bid on future contracts with TWU.

The definition of “contracting information” above is provided in Section 552.003(7) of the Government Code.

**17. Non-Discrimination.** The parties agree to comply with applicable state and federal rules governing non-discrimination, equal opportunity and affirmative action.

**18. Prohibited Bids and Contracts.** Under Section 2155.004 of the Texas Government Code, Contractor certifies that it is not ineligible to receive this Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is or becomes inaccurate.

**19. Suspension or Disbarment.** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, neither are in the process of being declared ineligible or being debarred, nor is either Contractor or any of its principals voluntarily excluded from covered transactions by any federal department or agency. TWU may immediately terminate this Agreement without penalty if Contractor’s certification herein is inaccurate or becomes inaccurate.

**20. No Financial Interest.** Contractor warrants, represents, and covenants that, in performing this Agreement, it will use reasonable care to ensure it does not employ any person who has direct or indirect financial interest in the transaction that is subject of this Agreement.

**21. HB 1295 Certification.** TWU must comply with the “Disclosure of Interested Parties” requirements mandated by HB 1295, as implemented by the Texas Ethics Commission. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity “submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.” The law applies to a contract of a governmental entity or state agency that has a value of at least $1 million. The Contractor therefore certifies that if required by Tex. Gov’t Code § 2252.908(d) it will submit the required disclosure of interested parties to TWU. Failure to do so will be grounds for termination of this Agreement without penalty to TWU.

**22. State Auditor’s Office.** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Texas Education Code. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

**23. Duty to Maintain Records.** Contractor shall maintain adequate records to support its charges, procedures, and performance to TWU for all work related to this Agreement to ensure proper accounting for all costs and performances related to this Agreement.

**24. Right to Audit.** Contractor shall, at all times during the term of the Agreement and for a period of four years after the completion of the services thereunder maintain such records, together with such supporting or underlying documents and materials. Contractor shall upon reasonable notice of TWU, whether during or after completion of the services and at TWU’s own expense make such records available for inspection and audit. Such records shall be made available to TWU during normal business hours at the TWU’s office or place of business. Costs of any audits conducted under the authority of this right to audit will be borne by TWU unless certain exemption criteria are met as stated hereafter. If the audit identifies inaccuracies (of any nature) by Contractor to TWU in excess of one‐half of one percent (.5%) of the total contract billings, the Contractor shall reimburse TWU the total costs of the audit. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor’s records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of TWU’s findings to Contractor.

**25. Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

**26. Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code (“Chapter 171”), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable. Contractor acknowledges that this Agreement may be terminated and payment may be withheld if this certification is or becomes inaccurate.

**27. Texas Family Code Child Support Certification.** As required by Section 231.006, Texas Family Code, Contractor certifies that it is not ineligible to receive payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is or becomes inaccurate.

**28. Buy Texas Certification.** As required by Section 2155.4441 Texas Government Code, Contractor agrees that it will buy Texas products and materials for use in providing the services contemplated herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.

**29. Boycott Certification.** As required by Texas Government Code Chapter 2271.002, Contractor certifies that either (1) it meets an exemption criteria under Section 2271.002; or (2) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is or becomes inaccurate. If Contractor meets an exemption, it shall provide TWU written notice of what that exemption is at the time the Agreement is made.

As required by Texas Government Code Chapter 2274, if Contractor has 10 or more full-time employees and the Contractor is to receive $100,000 or more in value for goods and services provided to TWU under this Agreement, Contractor certifies that it does not boycott energy companies and will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is or becomes inaccurate.

**30. Health and Safety Code Certification.** Contractor will comply with Subchapter A, Chapter 161, Health and Safety Code 161.0085(c) which prohibits requiring a customer to provide any documentation certifying the customer ’s COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business.

**31. Anti-Terrorism Certification.** As required by Texas Government Code Section 2252.152, Contractor represents and warrants that it is not a company prohibited under Section 2252.152 or 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. Excepted from this prohibition are companies the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran or foreign terrorist organizations.

**32. General Appropriations Act Certification.** As required by article IX, Section 6.25 of the General Appropriations Act, and except as provided therein, Contractor acknowledges and agrees that funds may not be distributed under this Agreement to any individual or entity that: (1) Performs an abortion procedure that is not reimbursable under the state's Medicaid program; (2) Is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the states' Medicaid program; or (3) Is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the state's Medicaid program.

**33. Firearm Certification.** As required by Subtitle F (State and Local Contracts and Fund Management), Title 10, Texas Government Code, if the total amount paid to Contractor under this Contract by TWU equals one hundred thousand dollars ($100,000.00) or more, Contractor represents and warrants that it (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

**34. Contractor Organization and Authority.** If Contractor is a corporation, partnership, or limited liability company, Contractor 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 Contractor has been duly authorized to act for and bind Contractor.

**35. Force Majeure.** In the event of a force majeure event which prevents TWU’s access to the goods and services provided by Contractor as described herein for more than thirty (30) days, TWU will have the option to terminate the Agreement, request a pro-rated refund of the fees paid, or extend the term of this Agreement by the period of time the goods and services are unavailable to TWU due to the force majeure event.

**36. No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**37. Non-Waiver**. No covenant or condition of the Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of any other covenant or condition to be performed by the other party under this Agreement.

**38. Severability/Interpretation.** The fact that a particular provision in this Agreement is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions, and this Agreement will continue to be binding on the parties. Any provision that is held to be void or unenforceable will be interpreted by the parties or the courts to be replaced with language that is as close as possible to the intent of the original provision so as to effectuate the purpose of this Agreement. Any ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of this Agreement.

**39. Assignment.** The parties recognize that the Agreement is based upon the skill and expertise of the parties and therefore agree that the Agreement and the obligations thereunder may not be assigned or delegated without the written consent of the other party, except as expressly allowed by the Agreement.

**40. Amendment.** This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.

**41. Survivability.** The terms and conditions contained in this Agreement which, by their sense and context, are intended to survive the expiration or termination of the Agreement shall survive.

**42. Governing Law.** Denton 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.

**43. Dispute Resolution.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by TWU and Contractor to attempt to resolve any claim for breach of contract made by Contractor, to the extent it is applicable to the Agreement and not preempted by other law. Except as otherwise provided by law, nothing herein is a waiver by TWU of the right to seek redress in a court of law.

**44. STATUTORY LIMITATIONS**. THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY TWU (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON TWU’S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS’ FEES; DISPUTE RESOLUTION; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE “LIMITATIONS”), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON TWU EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

TWU SHALL NOT BE LIABLE TO CONTRACTOR OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) RESULTING FROM TWU’S PERFORMANCE OR ANY FAILURE TO PERFORM HEREUNDER INCLUDING WITHOUT LIMITATION LOSS OF ANTICIPATED PROFITS OR BENEFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

[Signature Page to Follow]

University and Contractor have executed and delivered this Agreement to be effective as of the Effective Date.

**Name of Contractor Texas Woman’s University**

By: By:

Name: Name:

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

Date: Date:

Attached:

Exhibit A – Statement of Work

 **Exhibit A**

**Statement of Work**

 **[Optional. Include the following provision if an RFP or other bid document was issued.**

Notwithstanding any other provision in this Agreement, Contractor’s performance of the Services will (1) conform to the specifications and requirements of that certain Request for Proposal related to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for Texas Woman’s University System, RFP No. \_\_\_\_\_\_\_\_\_\_\_\_\_ (the “RFP”), which is incorporated by reference for all purposes, and (2) to the extent consistent with the RFP, will conform with Contractor’s proposal, dated \_\_\_\_\_\_\_\_\_ (“Contractor’s Proposal”) which was submitted by Contractor in response to the RFP and is incorporated by reference for all purposes. To the extent that the RFP or Contractor’s Proposal conflict with the terms of this Agreement, the terms of this Agreement will control.**]**

**I. Project:** Insert a brief statement regarding the history and/or objective of this project.

This section provides the Contractor and interested third parties with a broad overview of your department’s objective. (the “Project”.)

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**II. Services and/or Deliverables.** Contractor will provide the following services and/or deliverables in support of the Project:

The services to be provided by the Contractor may be divided into major phases (deliverables, tasks, items, etc). Each phase (deliverable, task, item, etc) may then be subdivided into important requirements within each phase. Consideration should be given to the inclusion of due dates for each.

Example:

Phase 1: Insert description of major phase. Insert due date.

 1.1 Insert description of components applicable to completing this phase.

 1.2 etc….

Instructions and Guidelines for Use:

This template is for use with a corporation, limited liability company, limited partnership, or individual. It is used for procurement of services from an independent contractor company when it is prudent to detail the services in a Statement of Work (see Exhibit A). ***Please note that all procurement procedures must be followed prior to using this agreement.*** See the Procurement Guidelines <https://twu.edu/procurement/purchasing/procurement-guidelines/>.

Once you have completed the requested information, please delete the highlights for fill-in information and instructions in red text. Now you are ready to submit the Agreement for TWU review, approval and signature. Please complete a Contract Routing Sheet that is located at <https://twu.edu/procurement/contracts/>.

Email Procurement and Contract Services at twucontracts@twu.edu if you have any questions about the use of this template for your specific arrangement or the information requested within the template.