

**AGREEMENT BETWEEN  
TEXAS STATE UNIVERSITY**

and

**[PROVIDER NAME]**

This Agreement is made by and between Texas State University (“Texas State” or “University”), a member of The Texas State University System (“TSUS”), an agency of the State of Texas, and with [Provider’s Name] or “Provider” with a business address of 601 University Drive, San Marcos, Texas 78666, and [Provider’s Address].

The purpose of this Agreement is to outline the terms and conditions for customized education abroad programs that University and Provider may conduct. The specific services and individual program details for each program will be outlined in a separate appendix in accordance with the terms of this Agreement.

In consideration of the mutual promises and covenants contained in the Agreement, University and Provider agree as follows:

**1. DEFINITIONS**

- 1.1 The “Program” refers to any and all services that Provider provides the participant.
- 1.2 The “Participant” refers to Texas State students and faculty who use Provider services.
- 1.3 Provider and Texas State are each a “Party” and together are “Parties” to this Agreement.
- 1.4 The “Appendix” refers to documents outlining the details of an individual program to include, but not limited to, services provided by Provider and costs paid by Texas State.

**2. STATEMENT OF WORK**

Texas State hereby engages Provider to assist in the development and administration of education abroad programs upon the terms and conditions provided in this Agreement. The education abroad programs to be conducted pursuant to this Agreement will be developed in coordination with the Education Abroad Office at Texas State. The details of the program including the number of students and faculty participants, program dates, cost per student, payment schedule, and cancellation terms will be determined by mutual written agreement between Texas State and Provider in a separate Appendix. Once a program has started, any itinerary changes must be approved by Texas State. Each program is subject to, and will not contain any terms serving to modify, the terms and conditions of this Agreement. Texas State agrees to make all reasonable efforts to meet minimum enrollment numbers for the different programs developed by Provider.

**3. TERM OF AGREEMENT**

The term of this Agreement shall begin on [date] and shall expire on [date], unless terminated earlier in accordance with this Agreement (the “Term”). The Term may be amended by mutual written and signed agreement.

**4. AUTHORIZED CONTRACT SUM**

4.1 Contract Sum: Allowable fees for each specifically authorized Program will be established per individual Appendices. Invoices for authorized work performed by Provider shall not exceed the fees established for any portion of authorized work. Established fee amounts shall not be increased except by written amendment to a previously issued Appendix signed by both parties.

4.2 No Minimum Amount of Work: Texas State makes no representations regarding the amount or type of services, if any, that Provider will be asked to provide to Texas State during the Term of this Agreement. It is expressly understood that Texas State is under no obligation to request services from Provider and no minimum amount of work is required or contemplated under this Agreement. All Appendices will be made by Texas State on an as-needed basis, subject to future agreement on the scope of the work and the fee.

4.3 Contract Limits: This contract may not reach or exceed \$[dollar amount] for the term of the Agreement.

## 5. PRICES AND PAYMENT TERMS

All payments under this Agreement shall be due as detailed in each Appendix and payment in full will be due to Provider prior to the Participants' arrival. Provider will make the Appendix available to Texas State as early as possible from the proposed Program start date.

5.1 The cost for individual Programs shall be set forth in the Program's Appendix and Provider shall not increase the prices or change the schedule of program activities or materially reduce the kind or quality of program goods and services as outlined and agreed upon in each Appendix without Texas State's prior written consent.

5.2 Payment shall be made in accordance with the "Prompt Payment" provision of Texas Government Code Section 2251. Provider will send invoices to the Texas State Education Abroad Office no later than five (5) weeks before payment is due. Invoices and payments will be calculated in U.S. dollars.

5.3 University, an agency of the State of Texas, is exempt from Texas Sales & Use Tax in accordance with Section 151.309 of the Texas Tax Code and Section 3.322 of Title 34 of the Texas Administrative Code.

5.4 The cost for individual Programs shall be set forth in the Program's Appendix and Provider shall not increase the prices or change the schedule of program activities or materially reduce the kind or quality of program goods and services as outlined and agreed upon in each Appendix without Texas State's prior written consent.

5.5 Within ten calendar days after termination of this Agreement, Provider will submit any outstanding invoice(s) to University, which will set forth all amounts due and remaining unpaid to Provider and upon approval of the final invoice(s) by University, University will pay to Provider the amount due.

5.6 Except for the obligation of University to pay Provider specified amounts pursuant to the terms of this Agreement, University will have no other liability to Provider or to anyone claiming through or under Provider by reason of the execution or performance of this

Agreement. Notwithstanding any obligation or liability of University to Provider, no present or future agent, officer, director, employee, or regent of University, or anyone claiming under University, has or will have *any* personal liability to Provider or to anyone claiming through or under Provider by reason of the execution or performance of this Agreement.

**6. FINANCIAL RESOURCES**

Provider shall ensure that there are adequate financial resources to perform the type, magnitude, and quality of work specified in the Program proposal. Upon Texas State's written request, Provider shall demonstrate adequacy of financial resources or ability to obtain required resources.

**7. PROGRAM CANCELLATION POLICY**

7.1 Provider will outline a cancellation schedule and refund policy for each Program, in the Program Appendix. Notice of cancellation must be received by Provider in writing on or before the cancellation date specified in the Appendix. Any refunds to Texas State will be made within thirty (30) business days from the date of notice of the Program cancellation. Provider shall absorb any exchange or transfer fees.

7.2 In the event Provider cancels a Program for any reason and is not able to provide an alternative Program acceptable to Texas State, Provider shall, within thirty (30) business days after cancellation of the Program, refund to Texas State one hundred percent (100%) of all payments made toward the Program.

7.3 No refund will be required in the event of a cancellation due to a force majeure event as defined below. Both Parties agree to negotiate in good faith for all cancellations due to a force majeure event.

**8. PERMITS AND LICENSES**

Provider agrees to obtain and keep in effect all necessary permits, licenses and notices required for its performance under this Agreement and will post or display in a prominent place the permits, licenses and notices as required by applicable law.

**9. STANDARD OF PERFORMANCE**

Provider agrees to use its best efforts, skill, diligence, judgment, and abilities to perform the Work; to conform to the highest standards of Provider's business; and to comply with all applicable laws.

**10. DEFAULT AND TERMINATION**

In the event of a material failure by Provider to perform in accordance with the terms of this Agreement, University may terminate this Agreement at any time upon giving fifteen (15) days advance written notice to Provider. If this Agreement is terminated, it is agreed by the Parties that any program that is currently abroad will be supported to completion under the terms of this agreement.

10.1 If at any time an involuntary petition of bankruptcy is filed against Provider and not dismissed within thirty days, or if Provider files a voluntary petition in bankruptcy, takes advantage of any insolvency law, or if a receiver or trustee is appointed and the appointment is not vacated within thirty days, University has the right to terminate this Agreement upon fifteen days advance written notice to Provider, in addition to any other rights of any nature

that University may have at law or in equity.

10.2 Either Party, without cause, may, terminate this Agreement at any time upon giving ninety calendar days advance written notice unless agreed in writing otherwise by the parties. Upon termination pursuant to this Section, Provider is entitled to payment of an amount that will compensate Provider for Work satisfactorily performed from the time of the last payment to the termination date in accordance with this Agreement. University is not required to reimburse Provider for any Work performed or expenses incurred after the termination date.

10.3 Termination under this Section does not relieve Provider or any of its employees, subcontractors or agents from liability for violations of this Agreement or any other act or omission of Provider.

10.4 University is entitled (but not obligated) to cure any default of Provider and has the right to offset against all amounts due to Provider any and all reasonable expenses incurred in connection with curative actions.

## **11. DISPUTE RESOLUTION**

The Parties shall use the dispute resolution process provided for in Chapter 2260 of the Government Code to attempt to resolve any claim for breach of Contract made by Provider.

## **12. INDEMNIFICATION**

PROVIDER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND THEIR REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, BY ANY PERSON OR ENTITY, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT, TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF PROVIDER, OR ITS AGENTS, EMPLOYEES, SUBPROVIDERS, SUPPLIERS OR ANYONE DIRECTLY EMPLOYED BY PROVIDER OR ANYONE FOR WHOSE ACTS PROVIDER MAY BE LIABLE. IN ADDITION, PROVIDER WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THIS AGREEMENT. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT, WHICH ANY INDEMNITEE HAS, BY LAW OR EQUITY. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO COOPERATE REASONABLY WITH

PROVIDER. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

**13. INSURANCE**

Provider, consistent with its status as an independent contractor, will carry and will cause its subcontractors to carry, at least the following insurance in a form, with companies and in amounts (unless otherwise specified) as University may require:

13.1 Workers' compensation insurance coverage for each of Provider's employees employed on this project. Provider must meet the statutory requirements of the Tex. Lab. Code, 401.011(44); and

13.2 Provider's Public Liability and Property Damage Insurance limits of not less than:

Bodily Injuries (including accidental death)	\$1,000,000
Per Occurrence	\$1,000,000
Property Damage	\$1,000,000

13.3 Owner's Protective Liability Insurance limits of not less than:

Bodily Injuries (including accidental death)	\$1,000,000
Per Occurrence	\$1,000,000
Property Damage	\$1,000,000

13.4 Commercial Automobile Liability Insurance Limits, covering all owned, non-owned or hired automobiles of not less than:

Bodily Injuries (including accidental death)	\$1,000,000
Per Occurrence	\$1,000,000
Property Damage	\$1,000,000

13.5 Such Insurance shall be primary and name The Texas State University System (TSUS), and Texas State, their Regents and employees added as additional insureds. The additional insured status must cover completed operations as well. This is not applicable to the workers' compensation and umbrella liability policies.

The workers' compensation and owners' protective liability policies will provide a waiver of subrogation in favor of the University.

13.6 Provider will deliver to University:

13.6.1 Evidence, satisfactory to University, of the existence of all insurance promptly after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to be performed by Provider under this Agreement.

13.6.2 Additional evidence, satisfactory to University, of the continued existence of all insurance not less than thirty days prior to the expiration of any insurance. Insurance policies, with the exception of Workers' Compensation, will name and the evidence will reflect University as an Additional Insured and will provide that the policies

will not be canceled until after thirty days unconditional written notice to University.

13.7 The insurance policies required in this Agreement will be kept in force for the periods specified below:

Commercial General Liability Insurance, Commercial Automobile Liability Insurance, will be kept in force until receipt of Final Payment by University to Provider; and

13.7.1 Workers' Compensation Insurance and Owner's Protective Liability Insurance will be kept in force until the Work has been fully performed and accepted by University in writing.

**14. TRAINING AND SAFETY**

Provider certifies that it and its employees have the background, training, and experience and necessary licenses to properly and professionally perform the services being delivered under this Agreement. Provider acknowledges that Texas State, in entering into this Agreement, reasonably expects Provider to be aware of all applicable safety standards and necessary safety procedures and practices to be able to perform the services to be delivered under this Agreement without injury to TSUS, Texas State, and their respective regents, employees, Participants, and any third parties.

**15. FORCE MAJEURE**

Except as otherwise provided, neither Provider nor University shall be liable to the other for any delay in or failure of performance of a requirement contained in this Agreement caused by Force Majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. "Force Majeure" is defined as acts of God, war, strike, fires, explosions, pandemics and epidemics, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such Party is unable to overcome. Each Party must inform the other in writing with proof of receipt within three (3) business days of the existence of such Force Majeure or otherwise waive this right as a defense.

**16. INDEPENDENT CONTRACTOR**

Provider is an independent contractor. University has no responsibility to provide transportation, insurance, vacation, or other fringe benefits normally associated with employee status. Provider, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with that status, that it will neither hold itself out as, nor claim to be an officer, partner, employee or agent of University, and that it will not make any claim, demand or application to or for any right or privilege applicable to an officer, representative, employee or agent of University, including unemployment insurance benefits, social security coverage or retirement benefits. Provider will make its own arrangements for any fringe benefits as it may desire and is solely responsible for the collection and payment of all income and other taxes required by applicable laws. All of Provider's employees providing the Work to University are solely the employees of Provider and are not for any purposes whatsoever the employees, agents or borrowed servants of, acting for or on behalf of, University. No acts performed or

representations, whether oral or written, made by Provider with respect to third parties will be binding upon University.

**17. ASSIGNMENT AND SUBCONTRACTING**

This Agreement is a personal service contract for Provider services, except as specifically provided in Historically Underutilized Business Subcontracting Plan (“HSP”), attached and incorporated for all purposes. Provider’s duties and obligations under this Agreement do not include the use of subcontractors for things like buses, train travel, hotels, etc. except as otherwise noted in the Program Appendix. The Provider’s interest in this Agreement (including Provider’s duties and obligations under this Agreement, and the fees due to Provider under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on University; and (b) be a breach of this Agreement for which Provider will be subject to all remedial actions provided by Applicable Laws, including Chapter 2161 of the Texas Government Code, and 34 TAC Chapter 20 §§20.101-20.108. The benefits and burdens of this Agreement are assignable by University.

**18. SEVERABILITY**

In case any provision of this Agreement, for any reason, is held invalid or unenforceable in any respect, the invalidity or unenforceability of that provision will not affect any other provision of this Agreement and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

**19. VENUE, GOVERNING LAW**

Travis County, Texas will be the proper place of venue for suit on or in respect to this Agreement. This Agreement and all of the rights and obligations of the will be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas. Nothing in this Agreement or any attachments shall be construed as a waiver of the constitutional, statutory, or common-law rights, privileges, immunities or defenses of the Parties. To the extent the terms of this section conflict with any other provision in this Agreement, the terms of this section shall control.

**20. REPRESENTATIONS AND WARRANTIES BY PROVIDER**

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.

**21. LIMITATIONS**

THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON UNIVERSITY'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 UNIVERSITY EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

**22. ENTIRE AGREEMENT; MODIFICATIONS**

This Agreement supersedes all prior agreements, written or oral, between Provider and University and will constitute the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement. This Agreement and each of its provisions will be binding upon the Parties and may not be waived, modified, amended or altered except by a writing signed by University and Provider.

**23. COMPLIANCE WITH LAW**

Provider is aware of, fully informed of, and in full compliance with its obligations with all applicable federal, state and local, laws, regulations, codes, ordinances and orders and with those of any other body or authority having jurisdiction ("Applicable Laws"), including Title VI of the *Civil Rights Act of 1964*, as amended (42 USC 2000(D)), Executive Order 11246, as amended (41 CFR 60-1 and 60-2), *Vietnam Era Veterans Readjustment Act of 1974*, as amended (41 CFR 60250), *Rehabilitation Act of 1973*, as amended (41 CFR 60-741), *Age Discrimination Act of 1975* (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), *Fair Labor Standards Act of 1938*, Sections 6, 7, and 12, as amended, *Immigration Reform and Control Act of 1986*, Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 95-507), *Americans with Disabilities Act of 1990* (42 USC 12101 et seq.), *Civil Rights Act of 1991*, *Occupational Safety and Health Act of 1970*, as amended (PL 91-596), *Immigration and Nationality Act* (8 United States Code 1324a) and all other applicable laws. Provider represents and warrants that neither Provider nor any firm, corporation or institution represented by Provider, nor anyone acting for that firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Provider's response to University's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.

**24. NO-BOYCOTT**

Pursuant to Section 2270.002 of the Texas Government Code, Provider certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the Term of this Agreement. Provider shall state in this Agreement any facts that make it exempt from the boycott certification.

**25. NONDISCRIMINATION**

In their execution of this Agreement, the Parties, all contractors, subcontractors, their respective employees, and others acting by or through them shall comply with all federal, state, laws



prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the Parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this Agreement.

**26. CONFIDENTIALITY AND SAFEGUARDING OF UNIVERSITY RECORDS; PRESS RELEASES; PUBLIC INFORMATION**

Completing the Work under this Agreement, Provider 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 laws, 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 Provider as a University official with a legitimate educational interest in University Records, and (2) Provider acknowledges that its improper disclosure or re-disclosure of personally identifiable information from University Records will result in Provider's exclusion from eligibility to contract with University for at least five (5) years. Provider 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 applicable laws, or (c) otherwise authorized by University in writing; (2) safeguard University Records according to 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, as well as the Payment Card Industry Data Security Standards) that are no less rigorous than the standards by which Provider protects its own confidential information; (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 laws, including FERPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with University's rules, policies, and procedures regarding access to and use of University's computer systems. At the request of University, Provider agrees to provide University with a written summary of the procedures Provider uses to safeguard and maintain the confidentiality of University Records.

- a. **Notice of Impermissible Use.** If an impermissible use or disclosure of any University Records occurs, Provider will provide written notice to University within one (1) day after Provider's discovery of that use or disclosure. Provider will promptly provide University with all information requested by University regarding the impermissible use or disclosure.
- b. **Return of University Records.** Provider agrees that within thirty 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 Provider; or (2), destroyed if return is not feasible. Twenty days before destruction of any University Records, Provider will provide University with written notice of Provider's intent to destroy University Records. Within five (5) days after destruction, Provider will confirm to University in writing the destruction of

University Records.

- c. **Disclosure.** If Provider has need to disclose any University Records to a subcontractor or agent, Provider will first secure written permission from the University and then require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Provider by this Agreement.
- d. **Press Releases.** Except when defined as part of the Work and specified in the Program Appendix, Provider will not make any press releases, public statements, or advertisement referring to the Work or the engagement of Provider as an independent contractor of University in connection with the Work, or release any information relative to the Work for publication, advertisement or any other purpose without the prior written approval of University.
- e. **Public Information.** University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to the disclosure of public information under the Texas Public Information Act, Chapter 552, Texas Government Code. Provider is required to make any information created or exchanged with the state pursuant to this Agreement that is not otherwise excepted from disclosure under the Texas Public Information Act available in a format that is accessible by the public at no additional charge to the state. The following format(s) shall be deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format.
- f. **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Provider has breached any of the restrictions or obligations set forth in this Agreement, University may immediately terminate this Agreement without notice or opportunity to cure.
- g. **Duration.** The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.

**27. ETHICS PROVISION**

Texas Government Code, Section 2261.251(a) and 2261.252 require an initial determination in this Agreement that no TSUS Regent, the Chancellor, Vice Chancellor and General Counsel, University President or Director of Procurement has a 1% interest (or other interest prohibited by law) in Name or any affiliated company. The Parties also assert that this Agreement complies with Texas Government Code, Section 2252.908, which requires a business entity to submit a [Disclosure of Interested Parties \(Disclosure\)](#), as prescribed by the Texas Ethics Commission, to the government entity (University) at the time the signed contract (or amendment) is submitted. Within 30 days after the Disclosure is filed, University will file a copy of the Disclosure with the Texas Ethics Commission.

**28. LOSS OF FUNDING**

Performance by University under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”) or allocation of funds by the Board of Regents of The Texas State University System (the “Board”). If the Legislature fails to

appropriate or allot the necessary funds or the Board fails to allocate the necessary funds, then University will issue written notice to Provider of such lost funding and University may terminate this Agreement without further duty or obligation hereunder. Provider acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University. University shall pay Provider for any expenses incurred up until the date of the notice of University's loss of funding.

**29. STATE AUDITOR'S OFFICE**

Provider understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State of Texas Auditor's Office or any successor agency (Auditor), to conduct an audit or investigation in connection with those funds. Provider shall cooperate with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Provider shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Provider and the requirement to cooperate is included in any subcontract it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of the Provider relating to this Agreement for any purpose.

**30. RIGHT TO AUDIT**

Provider agrees that University, or any of its duly authorized representatives, at any time during the term of the Agreement, will have access to, and the right to audit and examine, any relevant books, documents, papers, and records of Provider and related Provider charges incurred in its performance under this Agreement. Such records will be kept by Provider for a period of four years after final payment under this Agreement. Provider agrees to refund University within thirty days of being notified by University of any overpayments disclosed by any audits.

**31. COMPLIANCE WITH UNIVERSITY POLICIES**

Contractor agrees to comply with all University Policies. All University Policies and Procedures Statements may be viewed at <http://www.txstate.edu/effective/upps/>

**32. PERSONNEL; RESPONSIBILITY FOR INDIVIDUALS PERFORMING WORK;  
CRIMINAL BACKGROUND CHECKS**

Provider will provide representation that it has conducted the following background checks on its officers, employees, or other persons it causes to be on location of any Program:

- 32.1 Sex offender and criminal history databases where the above individuals will be placed on the program location, working with or around students;
- 32.2 Criminal history and credit history background checks where the above individuals will be handling money, informational technology, or other security-sensitive areas as determined by University;
- 32.3 Provider will determine on a case-by-case basis whether each individual assigned to perform the Work is qualified to provide the services. Provider will not knowingly assign any individual to provide services on the program location who has a history

of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.

- 32.4 Provider will provide University a letter signed by an authorized representative of Provider certifying compliance with this Section. Provider will provide University an updated certification letters each time there is a change in the individuals assigned to perform the Work.

**33. UNDOCUMENTED WORKERS**

The *Immigration and Nationality Act* (8 *United States Code* 1324a) (“Immigration Act”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“I-9 Form”) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Provider is required to: (1) have all employees complete and sign the I-9 Form certifying that they are eligible for employment; (2) examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual; (3) record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and (4) retain the I-9 Form as required by Applicable Laws. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual’s national origin or citizenship status. If Provider employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, University may terminate this Agreement. Provider represents and warrants that it is and will remain in compliance with the provisions of the Immigration Act.

**34. EQUAL OPPORTUNITY**

Pursuant to Applicable Laws, Provider represents and warrants that it is an equal opportunity employer and does not discriminate on the basis of race, color, religion, national origin, age, mental or physical disability, veteran status, sexual orientation or gender identity.

**35. TAXES**

Provider will pay when due all taxes or assessments applicable to Provider. Provider will comply with the provisions of all Applicable Laws related to taxes and taxing authority.

**36. PATENT, TRADEMARK, COPYRIGHT, AND OTHER INFRINGEMENT CLAIMS**

Provider shall indemnify, save and hold harmless the University from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from University’s or Provider’s use of or acquisition of any services or other items provided to University by Provider or otherwise to which University has access as a result of Provider’s performance under this Agreement, provided that University shall notify Provider of any such claim within a reasonable time of University’s receipt of notice of any such claim. If Provider is notified of any claim subject to this section, Provider shall notify University of such claim within five business days of such notice. No settlement of any such claim shall be made by Provider without University’s prior written approval. Provider shall reimburse University

for any claims, damages, losses, costs, expenses, judgments, or any other amounts, including, but not limited to, attorneys' fees and court costs arising from any such claim. Provider shall pay all reasonable costs of University's legal counsel and shall also pay costs of multiple counsel, if required, to avoid conflicts of interest.

**37. CONTRACTOR CONFLICT**

Contractor agrees that it will not at any time prior to or during the term of this Agreement, either directly or indirectly, use labor or materials that could or will create any difficulty with other contractors or labor engaged by Contractor or University.

**38. TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION**

Pursuant to Section 231.006 of the Texas Family Code, Provider certifies that it is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**39. ELIGIBILITY CERTIFICATIONS**

Pursuant to Sections 2155.004 and 2155.006 of the Texas Government Code, Provider certifies that the individual or business entity named in this Agreement is not ineligible to receive the award of or payments under this Agreement and acknowledges that this Agreement may be terminated and payment withheld if these certifications are inaccurate.

**40. PAYMENT OF DEBTS OR DELINQUENCY TO THE STATE OF TEXAS**

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

**41. FRANCHISE TAX CERTIFICATION**

If Provider is a taxable entity as defined by Chapter 171 of the Texas Tax Code, then Provider certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Provider is exempt from the payment of those taxes, or that Provider is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.

**42. WAIVERS**

No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

**43. BINDING EFFECT**

This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

**44. ACCESS TO UNIVERSITY FACILITIES -THIS SECTION INTENTIONALLY LEFT BLANK.**

**45. RECORDS**

Provider agrees that University or any of its duly authorized representatives at any time during the Term of this Agreement will have access to and the right to audit and examine any pertinent books, documents, papers, and records of Provider (such as sales receipts, salary lists, itemized expenses and disbursements, time reports, etc.), and related Providers charges incurred in its performance under this Agreement. Such records will be kept by Provider for a period of four years after final payment is made under this Agreement. Provider agrees to refund to University within thirty days of being notified by University of any overpayments disclosed by any audits.

**46. PRESENCE ON UNIVERSITY PREMISES-THIS SECTION INTENTIONALLY LEFT BLANK.**

**47. ETHICS MATTERS, NO FINANCIAL INTEREST**

Provider and its employees, agents, representatives and subcontractors have read and understand University's Conflicts of Interest Policy available at <http://www.txstate.edu/effective/upps/upps-01-04-02.html>, The Texas State University System Rules and Regulations, Chapter VIII, and applicable state ethics laws and rules, including Senate Bill 20 (84<sup>th</sup> Texas Legislature, 2015). Neither Provider nor its employees, agents, representatives or subcontractors will assist or cause University employees to violate University's Conflicts of Interest Policy. Provider represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

**48. HISTORICALLY UNDERUTILIZED BUSINESSES**

All agencies of the State of Texas are required to make a good faith effort to assist Historically Underutilized Businesses ("HUBs") in receiving their fair share of Contract or Subcontract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses contracting with state agencies. If under the terms of any agreement or contract the Provider subcontracts any services, then, Provider must make a good faith effort to utilize HUBs certified by the Statewide Procurement Division of the Texas Comptroller of Public Accounts (SPD).

**49. ACCESS BY INDIVIDUALS WITH DISABILITIES - THIS SECITON INTENTIONALLY LEFT BLANK.**

**50. CONTRACTS WITH INSTITUTIONS OF HIGHER EDUCATION**

In accordance with Texas Education Code, Section 51.9335(h), any contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the agreement or contract is considered to be a part of the executed agreement or contract without regard to (i) whether the provision appears on the face of the Agreement or Contract; or (ii) whether the agreement or contract includes any provision to the contrary.

**51. PROHIBITED CONTRACTS**

Per Texas Government Code, Chapter 2252.152, a governmental entity may not enter into a contract with a provider that the Comptroller of Public Accounts has identified is doing business

with a foreign terrorist organization. This prohibition extends to Iran and Sudan.

**52. FIREARM ENTITIES AND TRADE ASSOCIATIONS DISCRIMINATION**

Pursuant to Chapter 2274 of the Texas Government Code, for Agreements that exceed \$100,000, Provider verifies that it:

- (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
- (2) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.

**53. ENERGY COMPANY BOYCOTTS**

Pursuant to Chapter 2274 of the Texas Government Code, for Agreements that exceed \$100,000, Provider certifies that it:

- (1) does not boycott energy companies as defined in Section 809.001 (1)(A) Texas Government Code (i.e., fossil fuel companies); and
- (2) will not boycott energy companies during the term of the Agreement.

**54. VACCINE PASSPORT PROHIBITION**

Provider certifies that it does not require its customers 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 Provider's business. Provider acknowledges that such a vaccine or recovery requirement would make Provider ineligible for a state-funded contract.

**55. CRITICAL INFRASTRUCTURE AFFIRMATION**

Pursuant to Section 2274.0102 of Texas Government Code, Provider certifies that neither it nor its parent company, nor any affiliate of Provider or its parent company, is:

- (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103 of Texas Government Code, or
- (2) headquartered in any of those countries.

**56. NOTICES**

Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under this Agreement will be in writing and will be sent via registered or certified mail, overnight courier, or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, and (iii) if sent by email (to the extent an email address is set forth below), when received:

If to University: Texas State University  
Office of Procurement and Strategic Sourcing  
Attn: Director of Procurement and Strategic Sourcing  
601 University Drive  
San Marcos, Texas 78666  
Phone: 512-245-2521

Email: [contracts@txstate.edu](mailto:contracts@txstate.edu)  
<mailto:contracts@txstate.edu>

*with copy to:* Texas State University  
Education Abroad  
Attn: Isis de la O  
601 University Drive  
San Marcos, Texas 78666  
Phone: 512-245-1967  
Email: [isis@txstate.edu](mailto:isis@txstate.edu)

If to Provider: Name  
Name:  
Address:  
Phone:  
Email:

THE FOLLOWING LIST OF ATTACHMENTS ARE INCORPORATED INTO THIS AGREEMENT BY REFERENCE. ANY DISCREPANCIES BETWEEN ATTACHMENTS AND AGREEMENT, AGREEMENT TERMS AND CONDITIONS WILL PREVAIL.

Appendix – Scope of Work and Pricing

(Signatures on next page)

SAMPLE



**IN WITNESS WHEREOF**, duly authorized representatives of University and Provider have executed and delivered this Agreement effective as of the Effective Date.

**Texas State University**

**Provider**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**SAMPLE**