

Texas Tech University System Required Contract Terms

When incorporated by reference into an agreement between the Texas Tech University System (“TTUS”), a Texas public system of higher education, and/or any one or more of its component institutions, each Texas public institutions of higher education, the following terms (“Incorporated Terms”) form a material and binding part of the agreement between the parties (the “Contract”). As used herein, “University” means the TTUS party or parties to the agreement, and “Contractor” means the non-TTUS party or parties to the agreement, whether or not the relationship of Contractor is that of an independent contractor.

1. **Contractor’s Representations and Warranties.** Contractor represents and warrants it is duly organized, validly existing, and in good standing under the laws of the state of its incorporation; is authorized to conduct business in Texas; has all necessary approvals to execute the Contract; and the individual executing the Contract has been duly authorized to act for and bind Contractor.
2. **Independent Contractor.** This Contract does not form a joint venture or partnership. University will not be responsible for the Federal Insurance Contribution Act payments, federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will University furnish any medical or retirement benefits or any paid vacation or sick leave. Contractor is responsible for conduct of its business operation.
3. **Assignment.** Neither this Contract, nor any rights or obligations of monies due hereunder are assignable or transferable without University’s prior written agreement. Contractor will not assign or sub-award any portion of the Contract without University’s prior written approval, which will not be unreasonably withheld.
4. **Subcontractors.** Contractor shall not assign any of its duties or responsibilities under this Contract to any subcontractor, except as expressly provided for in this Contract and pre-approved by University in writing. Subcontractors providing services under the Contract shall meet the same requirements and level of experience required of Contractor. No subcontract under the Contract relieves Contractor of the responsibility for providing the services Contractor has agreed to provide. Additionally, if Contractor uses subcontractors to perform services, Contractor must comply with Texas Government Code § 2251.022.
5. **Tax exempt.** University is exempt from Texas Sales & Use Tax on goods and services in accordance with Texas Tax Code § 151.309, and 34 Texas Administrative Code § 3.322.
6. **Payments.** So long as Contractor has provided University, in writing, with its current and accurate Federal Tax Identification Number, University will pay Contractor for goods and services in accordance with Texas Government Code, Chapter 2251.
7. **Payment of Debt or Delinquency to the State.** Pursuant to Texas Government Code §§ 2107.008 and 2252.903, Contractor agrees any payments owing to Contractor under the Contract may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency thereof, regardless of when it arises, until such debt or delinquency is paid in full.
8. **Travel Expenses.** University shall only reimburse travel expenses pre-approved in writing, at rates not to exceed the most current rates set by the Texas Comptroller (<https://fmx.cpa.texas.gov/fmx/travel/texttravel/rates/current.php>). University may reimburse rental car expenses at rates not to exceed those set in University contracts. University will not reimburse for alcoholic beverages.
9. **State and System Funding.** University’s performance under the Contract may be dependent upon appropriation of funds by the Texas legislature (“Legislature”) and/or allocation of funds by the TTUS Board of Regents (“Regents”). Contractor acknowledges that appropriation and allocation of funds are beyond University’s control. If the Legislature fails to appropriate, or Regents fail to allocate, necessary funds, or if there is a reduction of funding from other revenue sources, University will issue written notice to Contractor and University may terminate this Contract without further duty or obligation hereunder, other than payment for goods and services already delivered or provided.
10. **Federal Funding.** This Contract may be funded wholly or partially with federal funds. All Contracts funded in whole or part with federal funds are subject to the Federal Funds Contract Terms available at <https://www.texastech.edu/ogc/contracting/federal-funds-contract-terms.pdf>. University utilizes <http://www.gsa.gov> and <https://www.ecfr.gov/> for all federal guidelines.
11. **Texas Public Information Act.** All information, documentation, and other material submitted by Contractor for and under this Contract are subject to public disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552 (“PIA”), or as otherwise required by applicable law or judicial order. Contractor is hereby notified that University strictly adheres to the PIA and the interpretations thereof rendered by the courts and Texas Attorney General (“AG”). University will use best efforts to maintain the confidentiality of all Contractor-submitted information except where University is required to disclose it under the PIA or other applicable law or judicial order.
12. **Publicity and Marks.** Contractor agrees that it will not publicize this Contract or disclose, confirm, or deny any details of this Contract to third parties, or use University’s name or protected marks without University’s prior written approval.
13. **Limitation on University’s Liability.** It is understood and agreed that University will not be liable for any negligent or wrongful acts, either of commission or omission, chargeable to it unless such liability is imposed by Texas law, and this Contract will not be construed as seeking to either enlarge or diminish any obligation or duty owed by University to Contractor or to any third party. It is understood and agreed that the University will not be liable for any indirect or consequential damages.

14. **Force Majeure.** “Event of Force Majeure” means an event beyond the control of Contractor or University which prevents or makes a party’s compliance with any of its obligations under this Contract illegal or impracticable, including but not limited to: act of God (including, without limitation, fire, explosion, earthquake, tornado, drought, and flood); war, act or threats of terrorism, hostilities (whether or not war be declared), invasion, act of enemies, mobilization, requisition, or embargo; rebellion, insurrection, military or usurped power, or civil war; contamination or destruction from any nuclear, chemical, or biological event; riot, commotion, strikes, go slows, lock outs, or disorder; epidemic, pandemic, viral outbreak, or health crisis; or directive of governmental authority. No party will be considered in breach of this Contract to the extent that performance of their respective obligations is prevented or made illegal or impracticable by an Event of Force Majeure that arises during the term (or after execution of the Contract but prior to the beginning of the term). A party asserting an Event of Force Majeure hereunder (“Affected Party”) will give reasonable notice to the other party of an Event of Force Majeure upon it being foreseen by, or becoming known to, Affected Party. In the event of an Event of Force Majeure, Affected Party will endeavor to continue to perform its obligations under the Contract only so far as reasonably practicable.
15. **University Insurance.** Contractor agrees University, as an agency of the State of Texas, may self-fund against general liability risk and that any Contractor requirements for University to carry insurance are waived. The Texas Tort Claims Act governs relief with respect to property damage, personal injury, and death proximately caused by the wrongful act or omission of a University employee acting within the scope of employment.
16. **Breach of Contract Claims.** The dispute resolution process provided for in Texas Government Code, Chapter 2260 (“Chapter 2260”) and the related rules adopted by the AG pursuant to Chapter 2260 will be used by Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. Chapter 2260 requires Contractor to first provide written notice of a claim and negotiate with University before proceeding to the contested case process. University will examine Contractor’s claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. Governed by rules adopted by the AG, the contested case process is Contractor’s sole and exclusive method to seek a remedy for breach unless, after considering the Administrative Law Judge’s report, the Legislature gives consent for Contractor to sue under Texas Civil Practice and Remedies Code Chapter 107. The parties specifically agree that (i) neither the execution of the Contract by University nor any other conduct, action, or inaction of any representative of University relating to the Contract constitutes or is intended to constitute a waiver of University or the State’s sovereign immunity to suit; and (ii) University has not waived its right to seek redress in the courts. Any term or provision in the Contractor Terms indicating agreement to arbitration, other alternative dispute resolution, or litigation options in the event of a dispute between the parties is expressly rejected and is null and void. Notwithstanding any other provision of the Contract to the contrary, unless otherwise requested or approved in writing by University, Contractor will continue performance and will not be excused from performance during the period any breach of agreement claim or dispute is pending under the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of Texas Government Code § 2251.051, and such suspension of performance is expressly applicable and authorized under that law.
17. **FERPA.** If given access to personally identifiable information about any student during performance of the Contract, Contractor agrees to abide by the limitations on re-disclosure of personally identifiable information from student records as set forth in the Family Educational Rights and Privacy Act (“FERPA”) 34 CFR § 99.3. To the extent Contractor has access to or creates “education records” (“FERPA Records”) under the Contract or is deemed a “school official”, as these terms are defined in FERPA, Contractor represents, warrants, and agrees it will: (1) hold FERPA Records in strict confidence and will not use or disclose FERPA Records except as (a) permitted or required by this Contract, (b) required by law, or (c) otherwise authorized by University in writing; (2) safeguard FERPA Records according to commercially reasonable administrative, physical, and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; and (3) continually monitor its operations and take any action necessary to assure that FERPA Records are safeguarded in accordance with the terms of this Contract. At University’s request, Contractor agrees to provide University with a written summary of procedures Contractor uses to safeguard FERPA Records. Contractor agrees to include same provision in subcontracts and affiliate agreements where such parties may have access to or create FERPA Records. Contractor will indemnify and hold harmless University from and against all claims, actions, and proceedings resulting from Contractor’s or its subcontractor’s or affiliate’s breach of any obligations under this paragraph.
18. **HIPAA.** When applicable, it is the parties’ intent to comply with all provisions of the Health Insurance Portability and Accountability Act of 1996, now codified at Title XI, Part C of the Social Security Act and as it may be amended, and all regulations promulgated thereunder (“HIPAA”), as may change from time to time. Contractor shall not, and shall require that its employees and agents shall not, disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by University in writing, any individually identifiable patient or medical record information regarding University patients, and the Contractor shall comply, and shall ensure that each of its employees and agents providing services under this Contract complies, with all federal and state laws and regulations, and all HIPAA rules, regulations and policies of University regarding the confidentiality of such information. If required, Contractor agrees to execute University’s business associate agreement.
19. **Required Posting.** Contractor acknowledges and agrees that University is required to post certain contracts and documents relating to contract solicitations under Texas Government Code §§ 2054.067 and 2261.253.

20. **Not Exclusive.** Contractor agrees that the Contract with University is non-exclusive, and University has the right to engage with other parties for similar or identical scopes of work, goods, or services.
21. **Access to Documents; Audits.** Contractor shall maintain and allow University to access records generated pursuant to this Contract for at least two (2) years after submission of the last accounting report date on which services were rendered, or until final resolution of any proceeding arising out of this Contract, whichever is later. Contractor understands acceptance of funds under this Contract constitutes acceptance of the authority of the Texas State Auditor's Office (and any successor), TTUS, and University (collectively, "Auditor") to conduct an audit or investigation in connection with those funds pursuant to Texas Education Code § 51.9335(c). Contractor agrees to cooperate with Auditor in the conduct of the audit or investigation, including without limitation providing requested records. University has the right, at University's cost, to audit Contractor's financial records pertaining to the Contract for the preceding twelve (12) month period either using University's personnel or an independent third party. University will complete such audit at Contractor's office, on reasonable advance notice, and on dates and times mutually agreed to by the parties. If the audit reveals Contractor owes University money, Contractor will pay the amount due within thirty (30) days of the date University notifies Contractor of the audit results. If the audit reveals University owes Contractor money, University will pay Contractor within thirty (30) days of the date the audit is complete.
22. **Return or Destruction of Data.** Upon expiration or termination of this Contract, and at University's discretion, all University data will be (a) returned to University (and any copies remaining with Contractor destroyed with confirmation of destruction provided to University), or (b) destroyed with written confirmation of destruction provided to University. University data includes all University information, database, confidential information, backup copies, and copies stored on external/third party-hosted storage.
23. **Contractor Certifications Required by Texas Law.**
- a. **Taxable Entity.** If Contractor is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), then Contractor certifies that it is not delinquent in the payment of any taxes due under Chapter 171, is exempt from the payment of those taxes, or is an out-of-state taxable entity that is not subject to those taxes.
 - b. **Child Support.** Pursuant to Texas Family Code § 231.006, Contractor certifies it is not ineligible to receive the award of the Contract or payments under the Contract and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate.
 - c. **Employment.** Pursuant to Texas Government Code § 669.003, Contractor certifies that it does not employ, or has disclosed its employment of, any former executive head of a Texas State agency or entity.
 - d. **No Trafficking.** Pursuant to Texas Government Code § 2155.0061, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
 - e. **No Boycott.** If this Contract has a value of \$100,000 or more to be paid wholly or partly from public funds of University, and if Contractor is a company, other than a sole proprietorship, with 10 or more full-time employees, then pursuant to Texas Government Code §§ 2271.002 and 2274.002, Contractor affirmatively states it does not and will not:
 - i. Boycott Israel during the term of this Contract. In this paragraph, the terms "company" and "boycott Israel" shall have the meanings described in Texas Government Code § 808.001.
 - ii. Boycott energy companies during the term of this Contract. In this paragraph, the terms "company" and "boycott energy companies" shall have the meanings described in Texas Government Code § 809.001.
 - f. **No Conflicts.** Contractor certifies this Contract is not prohibited under Texas Government Code § 2261.252(b) and agrees that if Contractor's certification is or becomes untrue, this Contract is void, and Contractor will not seek and waives its right to seek any legal or equitable remedy for past or future performance under this Contract, including damages, whether under breach of contract, unjust enrichment, or any other legal theory; specific performance; and injunctive relief.
 - g. **American Steel.** To the extent the Contract relates to a project as defined Texas Government Code § 2252.201(5) (to construct, remodel, or alter a building, structure, or infrastructure; supply material for such a project; or finance, refinance, or provide funds for such project), and no exemption in Texas Government Code § 2252.203 applies, any iron or steel product produced through a manufacturing process and used in the project that is the subject of the Contract must be produced in the United States (as defined in Texas Government Code § 2252.201(4)).
 - h. **Texas Health and Safety Code.** Contractor affirmatively states that it will comply with the requirements of Texas Health and Safety Code, § 161.0085(c).
 - i. **Compliance with Texas Government Code § 2274.002.** If this Contract has a value of \$100,000 or more to be paid wholly or partly from public funds of University, and if Contractor is a company, other than a sole proprietorship, with 10 or more full-time employees, then pursuant to Texas Government Code § 2274.002, Contractor verifies 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 contract against a firearm entity or trade association.

24. **Entire Contract; Modifications; Amendments.** The Contract supersedes all prior agreements, written or oral, between Contractor and University and will constitute the entire Contract and understanding between the parties with respect to the subject matter hereof. The Contract and each of its provisions will be binding upon the parties and may not be waived, modified, amended, or altered except in writing signed by representatives of University and Contractor with valid signature authority. All correspondence regarding amendments to the Contract must be forwarded to the University's contracting office for prior review and approval.
25. **Survival.** Provisions hereof that by their nature are intended to survive, including but not limited to confidentiality obligations, indemnification, and insurance, shall survive expiration or termination of this Contract.
26. **Severability.** If one or more provisions of this Contract, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Contract and the application to other parties or circumstances will remain valid and in full force and effect.
27. **Non-waiver of Defaults.** University's failure at any time to enforce or require the strict keeping and performance of any of the terms and conditions of this Contract will not constitute a waiver of such terms, conditions, or rights, and will not affect or impair it or University's right at any time to avail itself of the terms, conditions, or rights under this Contract.
28. **Applicable Laws and Regulations.** Contractor agrees that it will comply with all federal, state, and local laws, regulations, rules, and ordinances applicable to Contractor's performance under the Contract. If present on University's campus to perform services under this Contract, Contractor personnel will comply with University's applicable policies and procedures. Contractor also agrees that, pursuant to Texas Education Code § 51.9335(h), in any contract for the acquisition of goods or services to which University is a party, any provision required by applicable law to be included in the contract is considered to be part of this Contract whether or not the provision appears on the face of the contract or if the contract contains any provision to the contrary.
29. **Emergency Health and Safety Procedures.** In the event of pandemic, epidemic, viral outbreak, health crisis, or other emergency ("Emergency"), the University may, at its sole discretion, implement new or modified health and safety procedures in order to protect the health and safety of the University community. In the event of Emergency, Contractor agrees to adhere to all such policies, procedures, and directives of University when entering or performing services on University's campus.
30. **Limitations.** **THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY TO ENTER INTO CERTAIN TERMS AND CONDITIONS, INCLUDING TERMS AND CONDITIONS (IF ANY) RELATING TO LIENS ON UNIVERSITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF UNIVERSITY'S 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; ANY PROVISION THAT CREATES AN UNKNOWN OR UNFUNDED LIABILITY; 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.**
31. **Venue; Governing Law.** Pursuant to Texas Education Code § 109.005, the County in which University's Chief Executive Officer is located shall be the sole proper place of venue for any legal action or proceeding arising out of this Contract or the enforcement of any provision in this Contract. This Contract and all of the rights and obligations of the parties and any claims arising from this Contract will be construed, interpreted, and governed by the laws of the State of Texas.

End of Terms.