

**Texas Tech University System
Required Revenue 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 “Contracting Party” means the non-TTUS party or parties.

1. **Representations and Warranties.** Contracting Party 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 Contracting Party.
2. **Independent Contractor.** This Contract does not form a joint venture or partnership between the Parties. No Party will be responsible for the other Party’s federal or state taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will either Party furnish any medical or retirement benefits or any paid vacation or sick leave for the other Party or its employees, contractors, or agents. Each Party is solely responsible for conduct of its respective 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. Contracting Party will not assign or sub-award any portion of the Contract without University’s prior written approval, which will not be unreasonably withheld.
4. **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.
5. **Additional fees.** Any reference to payment or reimbursement of additional, future, or undefined Contracting Party fees in the Contract is agreed to only if pre-approved in writing by University prior to invoicing.
6. **Other 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”). Contracting Party 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 Contracting Party and University may terminate this Contract without further duty or obligation hereunder, other than payment for goods and services already delivered or provided.
7. **Texas Public Information Act.** All information, documentation, and other material submitted by Contracting Party 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. Contracting Party 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 Contracting Party-submitted information except where University is required to disclose it under the PIA or other applicable law or judicial order.
8. **Publicity and Marks.** Contracting Party 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.
9. **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 Contracting Party or to any third party. It is understood and agreed that the University will not be liable for any indirect or consequential damages.
10. **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.
11. **University Insurance.** Contracting Party agrees University, as an agency of the State of Texas, may self-fund against general liability risk and that any Contracting Party 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.

12. **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 Contracting Party to attempt to resolve any claim for breach of contract made by Contracting Party that cannot be resolved in the ordinary course of business. Chapter 2260 requires Contracting Party to first provide written notice of a claim and negotiate with University before proceeding to the contested case process. University will examine Contracting Party’s claim and any counterclaim and negotiate with Contracting Party in an effort to resolve such claims. Governed by rules adopted by the AG, the contested case process is Contracting Party’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 Contracting Party 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 Provided 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.
13. **FERPA.** If given access to personally identifiable information about any student during performance of the Contract, Contracting Party 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 Contracting Party 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, Contracting Party 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 Contracting Party 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, Contracting Party agrees to provide University with a written summary of procedures Contracting Party uses to safeguard FERPA Records. Contracting Party agrees to include same provision in subcontracts and affiliate agreements where such parties may have access to or create FERPA Records. Contracting Party will indemnify and hold harmless University from and against all claims, actions, and proceedings resulting from Contracting Party’s or its affiliates or agents’ breach of any obligations under this paragraph.
14. **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. Contracting Party 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 Contracting Party 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, Contracting Party agrees to execute University’s business associate agreement.
15. **Not Exclusive.** Contracting Party 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.
16. **Access to Documents.** Contracting Party 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
17. **Entire Contract; Modifications; Amendments.** The Contract supersedes all prior agreements, written or oral, between Contracting Party 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 Contracting Party 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.
18. **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.
19. **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.
20. **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.

21. **Applicable Laws & Regulations.** Contracting Party agrees that it will comply with all federal, state, and local laws, regulations, rules, and ordinances applicable to Contracting Party's performance under the Contract. If present on University's campus to perform services under this Contract, Contracting Party's personnel will comply with University's policies and procedures.
22. **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.
23. **Venue; Governing Law.** The County in which University's main campus or primary office in the State of Texas 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.