

SUPERVISOR SERVICES AGREEMENT

This Services Agreement (“Agreement”) is entered into and effective _____ (the “Effective Date”), by and between _____, a member of The Texas A&M University System (“A&M System”) and an agency of the state of Texas (hereafter referred to as “TEXAS A&M”), and _____ (hereafter referred to as “SUPERVISOR”). TEXAS A&M and SUPERVISOR are sometimes hereafter referred to as “Party” individually or “Parties” collectively.

TEXAS A&M and SUPERVISOR hereby agree as follows:

1. SERVICES

SUPERVISOR will perform the services as set forth in Exhibit A, Statement of Work, attached hereto (“Services”), in accordance with the terms and subject to the conditions contained in this Agreement.

2. SUPERVISOR OBLIGATIONS

- A. SUPERVISOR will perform the Services in accordance with the standards of care, skill, and diligence expected of a qualified, competent and experienced professional in the provision of the type of services required under this Agreement.
- B. SUPERVISOR will perform the Services substantially in accordance with SUPERVISOR’s documentation, including without limitation, any marketing materials, user guides, technical specifications, training materials, instructions, documented policies or other written materials regarding the Services that are posted, delivered or otherwise made available by SUPERVISOR to TEXAS A&M.
- C. SUPERVISOR will obtain, maintain in effect, and pay the cost for all licenses, permits, or certifications that may be necessary for SUPERVISOR’s performance of this Agreement.
- D. SUPERVISOR represents and warrants that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent SUPERVISOR’s performance of the Services.

3. TERM AND TERMINATION

- A. This Agreement will commence on the Effective Date and continues through [[End Date]] (the “Term”), unless earlier terminated as provided herein. The Term of the Agreement may be extended upon mutual written agreement executed by the Parties; provided that the total term of the Agreement shall not exceed five (5) years from the Effective Date.
- B. In the event of a breach of a material term of this Agreement by a Party, the non-

defaulting Party may terminate this Agreement upon thirty (30) days' prior written notice to the other Party detailing the nature of the breach and the other Party fails to fully cure the breach within such 30-day period.

- C. TEXAS A&M may immediately terminate this Agreement if the SUPERVISOR declares bankruptcy, is placed into involuntary bankruptcy or receivership or becomes insolvent.
- D. TEXAS A&M may terminate this Agreement without cause upon thirty (30) days' prior written notice to SUPERVISOR.
- E. In the event that TEXAS A&M terminates this Agreement for cause, TEXAS A&M shall receive a pro-rata refund of any pre-paid amounts.

4. PAYMENT TERMS

- A. In full consideration for the Services rendered by SUPERVISOR under this Agreement, TEXAS A&M shall pay SUPERVISOR in accordance with the terms set forth in Exhibit B, Payment Terms, attached hereto. The total compensation to SUPERVISOR under this Agreement will not exceed [[Value]] without an amendment to this Agreement.
- B. As an agency of the State of Texas TEXAS A&M is tax exempt. Tax exemption certification will be furnished to SUPERVISOR upon request.

5. OWNERSHIP OF CREATED WORKS

The Parties intend that all works prepared by SUPERVISOR under this Agreement ("Deliverables") will be works made for hire and the copyrights and all other rights in the Deliverables will be the sole and exclusive property of TEXAS A&M. If, for any reason, the Deliverables would not be works made for hire, then SUPERVISOR irrevocably assigns, transfers and conveys to TEXAS A&M, for no additional consideration, all of SUPERVISOR's ownership, rights, title and interest in and to the Deliverables, including, without limitation, all copyrights, patents, trademarks, trade secrets and other intellectual property rights and all other rights that may hereafter be vested relating to the Deliverables under law. SUPERVISOR certifies that all Deliverables will be original, or that SUPERVISOR will have obtained all rights necessary for the ownership and unrestricted use of the Deliverables by TEXAS A&M. SUPERVISOR shall secure for TEXAS A&M all consents, releases, and contracts and perform other reasonable acts as TEXAS A&M may deem necessary to secure and evidence TEXAS A&M's rights in any Deliverable.

6. COMPLIANCE WITH LAWS

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

- B. **Export Control.** Each Party shall comply with U.S. export control regulations. If either Party desires to disclose to the other Party any information, technology, or data that is identified on any U.S. export control list, the disclosing Party shall advise the other Party at or before the time of intended disclosure and may not provide export-controlled information to the other Party without the written consent of the other Party. SUPERVISOR certifies that none of its personnel participating in the activities under this Agreement is a “restricted party” as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.
- C. **FERPA.** If applicable, for purposes of the Family Educational Rights and Privacy Act (“FERPA”), TEXAS A&M hereby designates SUPERVISOR as a school official with a legitimate educational interest in any education records (as defined in FERPA) that SUPERVISOR is required to create, access, receive, or maintain to fulfill its obligations under this Agreement. SUPERVISOR shall comply with FERPA as to any such education records and is prohibited from redisclosure of the education records except as provided for in this Agreement or otherwise authorized by FERPA or TEXAS A&M in writing. SUPERVISOR is only permitted to use the education records for the purpose of fulfilling its obligations under this Agreement and shall restrict disclosure of the education records solely to those employees, subcontractors or agents who have a need to access the education records for such purpose. SUPERVISOR shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on SUPERVISOR in this Section, including without limitation, the prohibition on redisclosure. SUPERVISOR shall implement and maintain reasonable administrative, technical, and physical safeguards to secure the education records from unauthorized access, disclosure or use.

7. INDEMNIFICATION

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

8. MISCELLANEOUS

- A. **Authority to Contract.** Each Party represents and warrants that it has full right, power and authority to enter into and perform its obligations under this Agreement, and that the person signing this Agreement is duly authorized to enter into this Agreement on its behalf.
- B. **Entire Agreement.** This Agreement, together with the exhibits hereto, constitutes the entire and only agreement between the Parties relating to the subject matter hereof and supersedes any prior understanding, written or oral agreements between the Parties, or “side deals” which are not described in this Agreement. This Agreement may be amended only by a subsequent written agreement signed by authorized representatives of both Parties. The express terms hereof control in the event of a conflict with any other documents constituting part of this Agreement.
- C. **Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party’s reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).
- D. **Independent Contractor.** Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by SUPERVISOR’s service to TEXAS A&M. Except as specifically required under the terms of this Agreement, SUPERVISOR (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of TEXAS A&M or A&M System. As an independent contractor, SUPERVISOR is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers’ compensation insurance. SUPERVISOR and its employees shall observe and abide by all applicable policies, regulations, rules and procedures of TEXAS A&M and A&M System, including those applicable to conduct on its premises.
- E. **Non-Assignment.** SUPERVISOR shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of TEXAS A&M. Any purported assignment in violation of this Section will be void.

- F. **Non-Waiver of Defaults.** The failure of either Party at any time to require performance by the other Party of any provision of this Agreement will in no way affect the right to require such performance at any time thereafter nor will the waiver by either Party of a breach of any provision be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.
- G. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed given: (i) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (ii) the next business day after it is sent by overnight carrier, (iii) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (iv) on the date of delivery if delivered personally. TEXAS A&M and SUPERVISOR can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

TEXAS A&M:

Texas A&M University

Attention: _____

Telephone: _____

Email: _____

With a copy to:

Department of Contract Administration

1182 TAMU

College Station, Texas 77843

Attention: Director, Contract Administration

Telephone: 979-845-0099

Email: contracts@tamu.edu

SUPERVISOR:

Attention: _____

Telephone: _____

Email: _____

- H. **Organization.** If SUPERVISOR is a business entity, SUPERVISOR 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 SUPERVISOR has been duly authorized to act for and bind SUPERVISOR. Upon TEXAS A&M's request, SUPERVISOR shall promptly deliver to SUPERVISOR (i) a certificate of good standing certified by the appropriate governmental officer in its jurisdiction of incorporation or organization; and (ii) a certificate of fact issued by the Texas Secretary of State.

- I. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.
- J. **Survival.** Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.
- K. **U.S. Currency.** All amounts payable hereunder shall be paid in United States dollars.
- L. **Use of Name.** Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading. The Parties will mutually agree in advance upon any public announcements, or communications to the media regarding this Agreement or the services to be provided pursuant to this Agreement.

9. STATE AGENCY CLAUSES

- A. **Conflict of Interest.** SUPERVISOR certifies, to the best of their knowledge and belief, that no member of the A&M System Board of Regents, nor any employee of TEXAS A&M or A&M System, has a direct or indirect financial interest in SUPERVISOR or in the transaction that is the subject of this Agreement.
- B. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages

have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, *Texas Family Code*, SUPERVISOR certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

- C. **Dispute Resolution.** To the extent that Chapter 2260, *Texas Government Code* is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TEXAS A&M and SUPERVISOR to attempt to resolve any claim for breach of contract made by SUPERVISOR that cannot be resolved in the ordinary course of business. SUPERVISOR shall submit written notice of a claim of breach of contract under this Chapter to the [[Dispute Resolution Officer]] of TEXAS A&M, who shall examine SUPERVISOR's claim and any counterclaim and negotiate with SUPERVISOR in an effort to resolve the claim. This provision and nothing in this Agreement waives TEXAS A&M's sovereign immunity to suit or liability, and TEXAS A&M has not waived its right to seek redress in the courts.
- D. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- E. **Loss of Funding.** Performance by TEXAS A&M under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, TEXAS A&M will issue written notice to SUPERVISOR and TEXAS A&M may terminate or cancel this Agreement without further duty or obligation hereunder. SUPERVISOR acknowledges that appropriation of funds is beyond the control of TEXAS A&M. In the event of a termination or cancellation under this Section, TEXAS A&M will not be liable to SUPERVISOR for any damages that are caused or associated with such termination or cancellation.
- F. **Non-Waiver of Privileges and Immunities.** TEXAS A&M is an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the state of Texas. SUPERVISOR expressly acknowledges that TEXAS A&M is an agency of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TEXAS A&M of its right to claim such exemptions, remedies, privileges, and immunities as may be provided by law, including the sovereign immunity of TEXAS A&M.

- G. **Not Eligible for Rehire.** SUPERVISOR is responsible for ensuring that its employees involved in any work being performed for TEXAS A&M under this Agreement have not been designated as “Not Eligible for Rehire” as defined in A&M System policy 32.02, Discipline and Dismissal of Employees, Section 4 (“NEFR Employee”). In the event TEXAS A&M becomes aware that SUPERVISOR has a NEFR Employee involved in any work being performed under this Agreement, TEXAS A&M will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by TEXAS A&M.
- H. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, SUPERVISOR agrees that any payments owing to SUPERVISOR under this Agreement may be applied directly toward certain debts or delinquencies that SUPERVISOR owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- I. **Prohibition on Contracts with Companies Engaging in Business with Certain Countries and Organizations.** SUPERVISOR certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, *Texas Government Code*. SUPERVISOR acknowledges this Agreement may be terminated for cause immediately if this certification is inaccurate.
- J. **Public Information.** SUPERVISOR acknowledges that TEXAS A&M is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon TEXAS A&M’s written request, and at no cost to TEXAS A&M, SUPERVISOR will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of TEXAS A&M in a non-proprietary format acceptable to TEXAS A&M that is accessible by the public. SUPERVISOR acknowledges that TEXAS A&M may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*. The requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to this Agreement and SUPERVISOR agrees that this Agreement can be terminated if SUPERVISOR knowingly or intentionally fails to comply with a requirement of that subchapter.
- K. **State Auditor’s Office.** SUPERVISOR understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. SUPERVISOR agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records

requested. SUPERVISOR will include this provision in all contracts with permitted subcontractors.

- L. **Venue.** Pursuant to Section 85.18(b), Texas Education Code, mandatory venue for all legal proceedings against TEXAS A&M is to be in the county in which the principal office of TEXAS A&M’s governing officer is located.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

TEXAS A&M UNIVERSTIY

Signature

Signature

Name

Name

Title

Title

Date

Date

Exhibit A – Statement of Work
Exhibit B – Payment Terms

EXHIBIT A – STATEMENT OF WORK

SUPERVISOR agrees to serve as a student teacher supervisor for the _____ department (“the department”) at TEXAS A&M. SUPERVISOR will perform _____ observations, a mid-point evaluation meeting and a final evaluation meeting during the _____ semester. Observations will be submitted online. Each observation must be a minimum of _____ minutes and will be conducted at SUPERVISOR’s location. SUPERVISOR’s duties include the following:

EXHIBIT B – PAYMENT TERMS

TEXAS A&M agrees to pay SUPERVISOR \$_____ per student supervised for the rendition of services herein. TEXAS A&M will issue one payment of \$_____ to SUPERVISOR on or about 30 days after completion of SUPERVISOR's final observation. All checks will be made payable to _____ and mailed to the following address:

