

ADDENDUM TO AGREEMENT

This Addendum to Agreement ("Addendum") is made and entered into by and between Texas Tech University Health Sciences Center at El Paso (TTUHSC at El Paso), a public institution of higher education in the state of Texas ("TTUHSC at El Paso") and _____, a _____ ("Contractor"). This Addendum modifies and is incorporated by reference into the agreement to which it is attached entitled "Letter of Agreement, Guest Room Accommodations" with effective date of _____ (TTUHSC at El Paso # _____) between TTUHSC at El Paso and Contractor ("Agreement"). Both TTUHSC at El Paso and Contractor are also referred to herein as "Party" or, collectively "Parties." In addition, and to the extent they do not conflict with the terms in this Addendum, the TTUHSC at El Paso purchase order terms and conditions will apply to all purchases of goods and services by TTUHSC at El Paso and are incorporated by reference into this Addendum. Such terms and conditions are available at <https://www.depts.ttu.edu/procurement/formrepository/purchase-order-terms-and-conditions.pdf>. Notwithstanding any express provision stating that the terms of the Contractor Terms or any underlying quote will control in the event of conflict, Contractor's signature to this Addendum acknowledges that the Addendum is controlling in the event of a conflict of terms in the Contract.

- 1. Representations and Warranties by Contractor.** If Contractor is a corporation or a limited liability company, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 2. Additional fees.** Any reference to payment or reimbursement of additional, future, or undefined Contractor fees in the Agreement (e.g. travel expenses) is agreed to only if pre-approved by TTUHSC at El Paso in writing prior to invoicing.
- 3. Tax Certification.** If Contractor is a taxable entity as defined by Chapter 171, *Texas Tax Code* ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contractor is exempt from the payment of those taxes, or that Contractor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- 4. Payments.** So long as Contractor has provided TTUHSC at El Paso with its current and accurate Federal Tax Identification Number in writing and has otherwise complied with the terms of the Agreement, TTUHSC at El Paso will pay Contractor for goods and services in accordance with Chapter 2251, *Texas Government Code*. TTUHSC at El Paso, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* ("TAC") Section 3.322.
- 5. Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- 6. Texas Family Code Child Support Certification.** Pursuant to Section 231.006, *Texas Family Code*, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- 7. Early Termination.** TTUHSC at El Paso may terminate the Agreement for any reason by providing Contractor with ten (10) days prior notice. Despite anything in the Contractor Terms to the contrary, in no event will termination give rise to any liability on TTUHSC at El Paso's part including, but not limited to, Contractor's claims for compensation for anticipated profits, unabsorbed overhead, or interest on borrowing. TTUHSC at El Paso sole obligation hereunder is to pay Contractor for goods or services received prior to the date of termination.
- 8. Texas Public Information Act.** All information, documentation, and other material submitted by Contractor for and under this Agreement are subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552). Contractor is hereby notified that TTUHSC at El Paso strictly adheres to this statute and the interpretations thereof rendered by the Courts and the Texas Attorney General. TTUHSC at El Paso will use its best efforts to maintain the confidentiality of all

Contractor submitted information except where TTUHSC at El Paso is required to disclose it under the Texas Public Information Act. The Texas Attorney General will ultimately decide whether Contractor proprietary information is released to the public, however TTUHSC at El Paso will give Contractor notice of all requests for its proprietary information will be required to submit a letter, brief, or memorandum to the Attorney General with reasons in support of withholding their information.

9. **Publicity and Marks.** Contractor agrees that it will not publicize this Agreement or disclose, confirm, or deny any details of this Agreement to third parties, or use TTUHSC at El Paso's name or protected marks without TTUHSC at El Paso's prior express written approval.
10. **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 any of the provisions of this Agreement to TTUHSC at El Paso will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), 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, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

Annette A. Hinojos
Managing Director of Procurement Services
5001 El Paso Drive
MSC 51010
El Paso, Texas 79905
Fax 915-215-8813
annette.a.hinojos@ttuhsc.edu

or such other person or address as may be given in writing by TTUHSC at El Paso to Contractor.

Notwithstanding any other requirements for notices given by a party under the Agreement, if Contractor intends to deliver written notice to TTUHSC at El Paso pursuant to Section 2251.054, *Texas Government Code*, then Contractor will send that notice to TTUHSC at El Paso as follows:

Annette A. Hinojos
Managing Director of Procurement Services
5001 El Paso Drive
MSC 51010
El Paso, Texas 79905
Fax: 915-215-4582
annette.a.hinojos@ttuhsc.edu

11. **Venue; Governing Law.** This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions of this Agreement will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas. El Paso County, Texas, will be the proper place of venue for suit on or in respect to this Agreement.
12. **Limitation on TTUHSC at El Paso's Liability.** It is understood and agreed that TTUHSC at El Paso 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 that this Agreement shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by TTUHSC at El Paso to Contractor or to any third party.
13. **Indemnification.** The Contractor agrees to indemnify, defend, and hold harmless TTUHSC at El Paso and its respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives, and agents, against any and all liability, claims, suits, losses, costs, and legal fees caused by, or arising out of, or resulting from any act or omission of the Contractor in the performance or failure to perform within the Agreement including the acts or omission of any subcontractor or any direct or indirect employees of the Contractor or its subcontractors. The indemnification obligations set forth in the Agreement shall survive termination or expiration of the Contract.

- 14. Force Majeure.** "Event of Force Majeure" means an event beyond the control of the Parties which prevents a Party from complying with any of its obligations under this Contract, including but not limited to: act of God, not to include weather related events; war, invasion, act of foreign enemies, or embargo; rebellion, revolution, or insurrection; contamination or destruction from any nuclear event; or acts or threats of terrorism. Neither Party will be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented by an Event of Force Majeure that arises during the term. The Party (the "Affected Party") prevented from carrying out its obligations hereunder will give notice to the other Party of an Event of Force Majeure upon it being foreseen by, or becoming known to, the affected Party. If and to the extent that a Party is prevented from executing its obligations by the Event of Force Majeure, the Party will endeavor to continue to perform its obligations under the Agreement only so far as reasonably practicable.
- 15. Assignment.** Neither this Contract, nor any rights or obligations of monies due hereunder are assignable or transferable (as security for advances or otherwise) unless TTUHSC at El Paso agrees in writing. Contractor will not assign or sub award any portion of services encompassed by an Agreement without TTUHSC at El Paso's prior written approval, which will not be unreasonably withheld. TTUHSC at El Paso will not recognize any assignment or sub agreement made without TTUHSC at El Paso's prior written approval, and any such assignment by Contractor will be wholly void and ineffective for all purposes unless made in conformity with this section.
- 16. Contract Dispute Resolution.** Contractor shall use Texas Government Code, Chapter 2260's dispute resolution process to attempt to resolve any claim for breach of contract arising under the Agreement that is not resolved in the ordinary course of business. Chapter 2260 requires Contractor to initiate the process by providing written notice of a claim and negotiating with TTUHSC at El Paso, conditions precedent to the contested case process. Governed by rules adopted by the Texas Attorney General's Office, 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 Chapter 107 of the Civil Practices and Remedies Code. An event or claim for breach of contract is not grounds for Contractor to suspend performance under the Agreement.
- TTUHSC AT EL PASO DOES NOT WAIVE SOVEREIGN IMMUNITY BY ITS EXECUTION OF OR BY ANY CONDUCT OF ITS REPRESENTATIVES UNDER THE AGREEMENT, AND THE DISPUTE RESOLUTION PROCESS DOES NOT AFFECT TTUHSC AT EL PASO'S RIGHT TO ASSERT ALL CLAIMS AND DEFENSES IN A LAWSUIT.
- 17. Entire Agreement; Modifications.** The Agreement, as modified by this Addendum, supersedes all prior agreements, written or oral, between Contractor and TTUHSC at El Paso and will constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement 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 TTUHSC at El Paso and Contractor.
- 18. FERPA.** If given access to the personally identifiable information about any student during performance of the services, 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. Contractor agrees that it may create, receive from or on behalf of TTUHSC at El Paso, or have access to, records or record systems that are subject to FERPA (collectively, the "FERPA Records"). To the extent that Contractor has access to "education records" under the Contract, it is deemed a "school official," as each of these terms are defined under FERPA. Contractor represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or requires by this Contract, (b) required by law, or (c) otherwise authorized by Institution in writing; (2) safeguard the 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 the FERPA Records are safeguarded in accordance with the terms of this Contract. At the request of TTUHSC at El Paso, Contractor agrees to provide TTUHSC at El Paso with a written summary of the procedures Contractor uses to safeguard the FERPA Records. Contractor will indemnify and hold harmless TTUHSC at El Paso 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.

- 19. Required Posting.** Contractor acknowledges and agrees that TTUHSC at El Paso 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 acknowledges and agrees that the Agreement with TTUHSC at El Paso is non-exclusive and TTUHSC at El Paso has the right to engage with other contractors for similar or identical scopes of work, and to purchase similar or identical products or services from other contractors. Any term or provision in the Contractor Terms indicating the Agreement is exclusive is expressly rejected and is null and void.
- 21. Loss of Funding.** Performance by TTUHSC at El Paso under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of the Texas Tech 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 TTUHSC at El Paso will issue written notice to Contractor and TTUHSC at El Paso may terminate the Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of TTUHSC at El Paso.
- 22. State Auditor's Office.** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), Texas Education Code. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors. In addition, at any time during the term of the Agreement and for a period of four (4) years thereafter, the State of Texas, Texas Tech University System, TTUHSC at El Paso and/or other federal, state and local agencies which may have jurisdiction over this Agreement, at reasonable times and at its expense reserves the right to audit Contractor's records and books that relate only to this Agreement. In the event such an audit by TTUHSC at El Paso reveals any errors/overpayments by TTUHSC at El Paso, Contractor shall refund TTUHSC at El Paso the full amount of such overpayments within thirty (30) days of such audit findings, or TTUHSC at El Paso, at its option, reserves the right to deduct such amounts owing TTUHSC at El Paso from any payments due Contractor. If needed for audit, original or independently certified copies of off-site records will be provided to auditors at Contractor's expense within two (2) weeks of written request. This section will survive termination of this Agreement.
- 23. Ethics Matters; No Financial Interest.** TTUHSC at El Paso is an entity subject to the Deficit Reduction Act of 2005 and is required to establish and disseminate policies to be adopted by its Contractors and agents. Accordingly, Contractor agrees that it will comply with federal, state or local laws or regulations applicable to Contractor's performance under the Agreement. Contractor further agrees that it will comply with applicable TTUHSC at El Paso Operating Policies and Procedures located at <http://www.ttuhsoc.edu/HSC/OP>, including, but not limited to HSC OP 52.06, Standards of Conduct and Ethics Guide, HSC OP 52.03, Compliance Hotline, and HSC OP 52.04, Reporting Violations and Non-Retaliation Policy, as well as all relevant published TTUHSC at El Paso compliance programs, which are available on its website: <http://www.ttuhsoc.edu/compliance>. If Contractor performs coding/billing services or provides health care items or services on behalf of TTUHSC at El Paso, upon request from TTUHSC at El Paso, Contractor agrees to participate in TTUHSC at El Paso's billing compliance and HIPAA privacy training sessions.
- 24. HIPAA Compliance.** It is the intent of the Parties 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 these 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 TTUHSC at El Paso in writing, any individually identifiable patient or medical record information regarding TTUHSC at El Paso patients, and the Contractor shall comply, and shall ensure that each of its employees and agents providing Services under this Agreement complies, with all federal and state laws and regulations, and all HIPAA rules, regulations and policies of TTUHSC at El Paso regarding the confidentiality of such information. If required, Contractor agrees to execute TTUHSC at El Paso's business associate agreement.

- 25. Use of Name.** Neither Party to this Agreement shall use the name or indicia of the other Party, nor of any of a Party's employees, in any manner of publicity, advertising, or news releases without prior written approval of the other Party.
- 26. Independent Contractor.** Nothing in the Agreement is intended nor shall be construed to create an employer/employee relationship between the contracting Parties. The sole interest and responsibility of the Parties is that the services covered by the Agreement shall be performed and rendered in a competent, efficient, and satisfactory manner.
- 27. Insurance.** The TTUHSC at El Paso School of Medicine Medical Self-Insurance Plan for medical liability provides coverage to its employed physicians in accordance with the terms of the Plan. TTUHSC at El Paso also maintains workers compensation insurance in accordance with Texas law. TTUHSC at El Paso state employees are subject to Texas Civil Practice and Remedies Code, Chapter 104, State Liability for Conduct of Public Servants, under which state employees acting and the course and scope of their employment are entitled to protection from the state with limits as set forth in 104.003. Notwithstanding anything in the Agreement to the contrary, TTUHSC at El Paso shall not be required to purchase or maintain any additional insurance required by the Agreement.
- 28. Limitations.** THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF TTUHSC AT EL PASO (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING TERMS AND CONDITIONS (IF ANY) RELATING TO LIENS ON TTUHSC EL PASO'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 OF THE AGREEMENT RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON TTUHSC AT EL PASO EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 29. Contractor Certification.** Contractor certifies this Agreement is not prohibited under Texas Government Code 2261.252(b) and agrees that if Contractor's certification is or becomes untrue, this Agreement 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.
- 30. No Boycott.** If this [Contract] has a value of \$100,000 or more that is to be paid wholly or partly from public funds of [TTUHSCs], and if [Contractor] is a company, other than a sole proprietorship, with ten (10) or more full-time employees, then pursuant to Texas Government Code § 2270.002, [Contractor] affirmatively states that it does not boycott Israel and will not 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.
- 31. Addendum Controlling.** Notwithstanding anything in the Agreement to the contrary, in the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.
- 32. Applicable Laws & Regulations.** Contractor agrees that it will comply with all federal, state, and local laws, regulations, ordinances, and other rules applicable to Contractor's performance under the Contract. Contractor also agrees that in any Agreement for the acquisition of goods or services to which TTUHSC at El Paso is a party, any provision required by applicable law to be included in the Agreement is considered to be part of the Agreement whether or not the provision appears on the face of the Agreement or if the Agreement contains any provision to the contrary.
- 33. HUMAN TRAFFICKING:** Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

34. **EXCLUSION:** Supplier represents and warrants that neither Supplier or any employees or agents who provide items or Services under this Agreement are excluded, suspended or debarred from participation in any federal or state health care program or federally funded contracts. TTUHSC EP may conduct searches of Supplier 's name against various federal and state sanction and exclusion databases, including, but not limited to the HHS OIG List of Excluded Individuals/Entities (LEIE), the federal System for Award Management (SAM) and the Texas HHSC Exclusion List. Supplier agrees to immediately inform TTUHSC EP as soon as it is aware that it or any of its employees, agents or Suppliers providing items or services under the Agreement are subject to the imposition of any such sanctions or exclusion. This Agreement shall be subject to immediate termination by TTUHSC EP in the event Supplier, or any of its employees, agents or Suppliers, is listed on any federal or state sanction/exclusion list as being subject to sanctions or exclusion.
35. **EMERGENCY HEALTH AND SAFETY PROCEDURES:** In the event of pandemic, epidemic, viral outbreak, health crisis, or other emergency (“Emergency”), TTUHSC may, at its sole discretion, implement new or modified health and safety procedures in order to protect the health and safety of the TTUHSC community. In the event of Emergency, Supplier agrees to adhere to all such procedures and related directives from TTUHSC when entering onto and performing services on TTUHSC’s campus.
36. **COVID-19 HEALTH AND SAFETY PROCEDURES.** Published at: <https://www.ttuhsoc.edu/coronavirus/>
37. **INCORPORATED TERMS:** The Parties acknowledge and agree that the Required Contract Terms set forth at <http://www.texastech.edu/ogc/required-contract-terms.pdf> and the Required IT Terms set forth at <http://www.texastech.edu/ogc/contracting/required-IT-terms.pdf> are incorporated into this Agreement as if expressly stated herein (the “Incorporated Terms”).
38. **CONTROLLING TERMS:** Supplier agrees that this Purchase Order, including the Incorporated Terms, form the agreement between TTUHSC and Supplier. In the event of a conflict between the Incorporated Terms and any other term of this Purchase Order, Supplier acknowledges and agrees that the Incorporated Terms are controlling.

Contractor:

**Texas Tech University Health Sciences Center
El Paso:**

By: _____

By: _____

Name: _____

Name: Annette A. Hinojos

Title: _____

Title: Managing Director of Procurement Services

Date: _____

Date: _____