

RIDER 103. GENERAL TERMS AND CONDITIONS

UTMB, in compliance with applicable federal and state laws and regulations, does not discriminate on the basis of race, color, national origin, sex, age, religion, disability, handicap or status as a veteran in any of its policies or procedures. This includes, but is not limited to, admissions, employment, financial aid and educational services.

- 1. COMPLETE AGREEMENT:** This Rider 103, which is hereby incorporated by reference and made a part of the Agreement and/or Purchase Order to which it is attached, along with any other attached UTMB riders, terms, conditions and specifications (collectively, the “Agreement”) form the sole and exclusive agreement between the parties and together supersede all other writings. Nothing herein shall be construed to be an acceptance of any terms of Contractor.
- 2. AUTHORIZATION OF GOODS OR SERVICES:** UTMB will not pay for goods or services that have not been requested through: a) an authorized Purchase Order; or b) an authorized UTMB Contract. In the event a Supplier provides goods or services to UTMB without an authorized Purchase Order or UTMB Contract, UTMB will not be financially responsible for the payment of those good or services.
- 3. MODIFICATION:** No modification of the Agreement shall be effective without UTMB’s prior written consent. No course of prior dealings, no usage of the trade and no course of performance shall be used to modify, supplement or explain any terms used in the Agreement. UTMB will not be bound by any oral statement, verbal agreement, or other representation contrary to the written specifications, terms, and conditions of the Agreement.
- 4. CANCELLATION:** UTMB shall have the right to cancel all or any part of the Agreement if Contractor breaches any of the terms, conditions, or requirements hereof, or if the Contractor closes its business operations, becomes insolvent or is adjudged bankrupt. Such right of cancellation is in addition to, and not in lieu of, any other remedies which UTMB may have at law or in equity.
- 5. DEFAULT AND TERMINATION:**
 - (a) UTMB may terminate the Agreement without cause at any time upon thirty (30) days’ advance written notice to Contractor, in which event Contractor will be entitled to payment of an amount that will compensate Contractor for any goods accepted or services satisfactorily performed in accordance with the Agreement from the time of the last payment date to the termination date; provided, that, Contractor has delivered or performed all such goods or services to UTMB for which payment is made. Notwithstanding any provision in the Agreement to the contrary, UTMB will not be required to pay or reimburse Contractor for any goods delivered, services performed, or expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.
 - (b) In the event of a material failure by a party to the Agreement to perform in accordance with the terms of the Agreement (a “default”), the other party may terminate the Agreement upon thirty (30) days’ advance written notice of termination setting forth the nature of the material failure; provided, that, the material failure is through no fault of the terminating party. Termination will not be effective if the material failure is fully cured prior to the end of the thirty-day period.
 - (c) If Contractor fails to cure any default within fifteen (15) days of receiving written notice of the default, UTMB will be entitled (but not obligated) to cure the default and will have the right to offset against all amounts due to Contractor under the Agreement, including but not limited to any and all reasonable expenses incurred in connection with UTMB’s curative actions.
 - (d) Termination will not relieve Contractor from liability for any default or breach under the Agreement, or any other act or omission of Contractor.
 - (e) If UTMB will make pre-payments to Contractor under the Agreement, Contractor will within thirty (30) days of termination of the Agreement reimburse UTMB all fees paid by UTMB to Contractor that were (i) not earned by Contractor prior to termination, or (ii) for goods or services that UTMB did not receive from Contractor prior to termination.
- 6. DELIVERY AND SHIPPING:** All packages and packing lists must reference UTMB’s Purchase Order Number. Failure to do so may result in the shipment being rejected and/or a delay in payment. Time is of the essence and

if delivery of conforming goods or performance of services is not completed by the time(s) promised, UTMB reserves the right, in addition to its other rights and remedies, to cancel the Agreement, to reject non-conforming goods or services in whole or in part upon reasonable notice to Contractor, and/or purchase substitute goods or services elsewhere and charge Contractor with any losses incurred. If a delay in promised delivery is foreseen, Contractor shall give written notice to UTMB, and the delivery date may be extended in UTMB's sole discretion. Contractor must keep UTMB apprised at all times of the status of the Agreement. No substitutions or cancellations will be permitted without prior UTMB approval. Any provisions herein for delivery of goods or performance of services by installments shall not be construed as making the obligation of Contractor severable. All freight, transportation and handling charges must be prepaid by Contractor or paid through UTMB's official Third Party Freight Program. **C.O.D. shipments will not be accepted.**

7. **ACCEPTANCE OF PRODUCTS AND SERVICES:** All products furnished and all services performed under the Agreement shall be to the satisfaction of UTMB as determined by its Project Coordinator and will conform to the specifications, drawings, samples or other descriptions furnished or adopted by UTMB (collectively 'specifications'), and will be new, merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. UTMB will have the rights of inspection and approval and may reject and return goods or require performance of services at Contractor's expense if defective or not in compliance with UTMB's specifications. Defects will not be deemed waived by UTMB's failure to notify Contractor upon receipt of goods or completion of services or by payment of invoice.

Any work performed under the Agreement will be completed to the satisfaction of the Project Coordinator who will, in all cases, determine the amount, quality, acceptability and fitness of the work that is to be paid for under the Agreement. The Project Coordinator will decide all questions that may arise regarding the fulfillment of the Agreement by Contractor, and the Project Coordinator's determination and decision thereon will be final and conclusive.

If the work performed by Contractor does not conform to the requirements of the Agreement as determined by the Project Coordinator, UTMB, at its sole option, may request Contractor to re-perform the work at no additional charge to UTMB or may request a deduction from the Agreement price originally mutually agreed upon between Contractor and UTMB.

8. **TITLE AND RISK OF LOSS:** Title and risk of loss of goods shall not pass to UTMB until UTMB actually receives, approves, and takes possession of the goods at the point or points of delivery.
9. **ASSIGNMENT AND SUBCONTRACTS:** No right or interest in the Agreement may be assigned, nor any obligation of Contractor delegated, to any third party without the prior written consent of UTMB. Any such assignment or delegation by Contractor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
10. **INDEPENDENT CONTRACTOR:** For all purposes of the Agreement and notwithstanding any provision of the Agreement to the contrary, Contractor is an independent contractor and is not a state employee, partner, joint venturer, or agent of UTMB. Contractor will not bind nor attempt to bind UTMB to any agreement or contract. As an independent contractor, Contractor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including workers' compensation insurance.
11. **INSURANCE:** Contractor, consistent with its status as an independent contractor, will carry and will cause its subcontractors to carry, at least the following insurance in the form, with companies admitted to do business in the State of Texas and having an A.M. Best Rating of A-:VII or better, and in amounts (unless otherwise specified), as UTMB may require:

- (a) Workers' Compensation Insurance with statutory limits, and Employer's Liability Insurance with limits of not less than \$1,000,000:

Employer's Liability - Each Accident	\$1,000,000
Employer's Liability - Each Employee	\$1,000,000
Employer's Liability - Policy Limit	\$1,000,000

Policies must include (i) Other States Endorsement to include Texas if business is domiciled outside the State of Texas, and (b) a waiver of all rights of subrogation in favor of UTMB.

- (b) Commercial General Liability Insurance with limits of not less than:

General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$ 50,000
Medical Expenses (any one person)	\$ 10,000

Policy will include independent contractor's liability covering, but not limited to, the liability assumed under the indemnification provision of the Agreement, fully insuring Contractor (or Contractor's subcontractors') liability for bodily injury (including death) and property damage.

- (c) Commercial Automobile Liability Insurance covering all owned, non-owned/leased or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage.
- (d) Cyber Liability Insurance with limits of not less than \$10,000,000 for each wrongful act. This policy must cover:
- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of University data, whether by Contractor or any of subcontractor or cloud service provider used by Contractor;
 - Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
 - Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
 - Liability for technological products and services;
 - PCI fines, fees, penalties and assessments;
 - Cyber extortion payment and response costs;
 - First and Third Party Business Interruption Loss resulting from a network security failure;
 - Affirmative GDPR coverage;
 - Costs of restoring, updating or replacing data; and
 - Liability losses connected to network security, privacy, and media liability.

If this policy is written on a claims-made basis, (a) the "retroactive date" must be prior to the commencement of Work under this Agreement; and (b) if this policy is cancelled, terminated or non-renewed at any time during the Term, Contractor will purchase an "extended reporting period" for at least a period of two (2) years beyond the termination or expiration of the Term.

Contractor's policy will provide a carve-back to the "Insured versus Insured" exclusion for claims brought by or on behalf of additional insureds.

In the event Contractor becomes aware of an actual or potential cyber incident, including the occurrence of a breach or potential breach of data security, impacting UTMB, Contractor shall notify UTMB, in writing, within forty-eight (48) hours and include in the notice a brief description of the cyber incident, the extent of the cyber incident, and possible consequences of the cyber incident.

Certificates evidencing such coverage must be furnished to UTMB prior to the start of work by the insurance carrier and name UTMB, The University of Texas System, and The University of Texas System Board of Regents as holder and additionally insured. Certificates shall not be cancelable without thirty (30) days prior written notice.

12. INDEMNIFICATION:

- (a) TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UTMB, AND HOLD HARMLESS UTMB AND THE UNIVERSITY OF TEXAS SYSTEM, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY

“INDEMNITEES”) FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES), AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY “CLAIMS”) BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM CONTRACTOR’S PERFORMANCE UNDER THE AGREEMENT AND WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION, OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR, OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

- (b) IN ADDITION, CONTRACTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UTMB, AND HOLD HARMLESS INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE PERFORMANCE OF SERVICES OR THE PROVISION OF GOODS BY CONTRACTOR PURSUANT TO THE AGREEMENT, OR THE USE BY CONTRACTOR, OR BY INDEMNITEES AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL; PROVIDED, THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR SUCH INFRINGEMENT, UTMB SHALL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UTMB AGREES TO REASONABLY COOPERATE WITH CONTRACTOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
- (c) The indemnities contained herein shall survive the termination of the Agreement for any reason whatsoever.

13. NON-DISCLOSURE: Unless required by law or consented to in writing by UTMB, no disclosure, description, or other communication of any sort shall be made by Contractor to any third party regarding UTMB’s purchase of goods or services hereunder, or of the details and characteristics thereof. Anything furnished to Contractor by UTMB pursuant to the Agreement, including without limitation, samples, drawings, patterns and materials shall remain the property of UTMB, shall be held at Contractor’s risk, and shall be returned upon completion of the work. No disclosure or reproduction thereof in any form shall be made without UTMB’s prior written consent.

14. FORCE MAJEURE: Neither party hereto will be liable or responsible to the other for any loss or damage, or for any delays or failure to perform, due to causes beyond its reasonable control, including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character (“force majeure occurrence”). Provided, however, in the event of a force majeure occurrence, Contractor agrees to use its best efforts to mitigate the impact of the occurrence so that UTMB may continue to provide healthcare services during the occurrence. In the event of such delay or failure to perform, the period specified for performance hereunder may be extended for a period equal to the time lost by reasons of the delay, or the total Agreement may be reduced by the performance (or portions thereof) omitted during such delay. Notwithstanding the foregoing or anything to contrary herein, this provision shall be deemed inapplicable to the extent the goods or services to be provided under the Agreement are intended to be provided in response to or during a force majeure occurrence.

15. GOVERNING LAW AND VENUE: Galveston County, Texas, shall be the proper place of venue for suit on or in respect of the Agreement. The Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

16. COMPLIANCE WITH LAW: Contractor is aware of, is fully informed about, and in full compliance with its obligations under existing applicable law and regulations, 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), the Vietnam Era Veterans Readjustment Act of 1974, as amended (41 CFR 60-250), the Rehabilitation Act of 1973, as amended (41 CFR 60-741), the Age Discrimination Act of 1975 (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), Omnibus Budget Reconciliation Provision, Section 952, the Fair Labor Standards Act of 1938, Sections 6, 7, and 12, as amended, the Immigration Reform and Control Act of 1986, and Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 96-507), the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.), the Civil Rights Act of 1991, University of Texas System Administration Policy UTS165, and all laws and regulations and executive orders as are applicable.

- 17. UTMB PREMISES RULES:** If the Agreement requires Contractor's presence on UTMB's premises or in UTMB's facilities, Contractor agrees to cause its employees, representatives, agents, or subcontractors (collectively, "Contractor Personnel") to become aware of, fully informed about, and in full compliance with all applicable UTMB rules and policies, including without limitation those relative to personal health, security, environmental quality, safety, fire prevention, noise, smoking, use of tobacco, access restrictions, traffic, and parking. Further, Contractor Personnel must be escorted by a UTMB employee at all times.

Care for UTMB patients is the first priority. When patients are being transported in UTMB elevators, Contractor's employees, agents, representatives, and subcontractors should exit the elevator and wait for the next available one to arrive.

Additionally, if Contractor Personnel are performing work on UTMB's premises for a period longer than three (3) days or twenty (20) hours, Contractor will be subject to UTMB's Security Requirements, which will require Contractor to perform a security clearance check and a urine drug test on each individual. Contractor shall contact UTMB's Purchasing Compliance Officer at (409) 747-8000 to ensure its compliance with this Section.

- 18. ASSIGNMENT OF OVERCHARGE CLAIMS:** Contractor hereby assigns to UTMB any and all claims for overcharges associated with the Agreement arising under the antitrust laws of the United States, 15 USC 1, or arising under the antitrust laws of the State of Texas, Texas Business and Commerce Code Chapter 15.
- 19. AUTHORIZED TO CONDUCT BUSINESS IN TEXAS AND EXECUTE AGREEMENTS:** 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.
- 20. PAYMENT OF DEBT OR DELINQUENCY TO THE STATE:** Pursuant to Texas Government Code Sections 2107.008 and 2252.903, Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly to 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.
- 21. NO INDUCEMENT FOR CONTRACT AWARD:** Contractor affirms that it has not given or offered to give, nor does Contractor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the Agreement.
- 22. TAX CERTIFICATION:** If Contractor is a taxable entity as defined by Texas Tax Code Chapter 171 ("Chapter 171"), then Contractor certifies that it is not currently delinquent in the payment of any Franchise 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. A false certification will be deemed a material breach of contract and, at UTMB's sole option, may result in termination of the Contract.
- 23. ANTITRUST CERTIFICATION:** Contractor certifies that neither Contractor nor any firm, corporation, partnership or institution represented by Contractor, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, Texas Business and Commerce Code Chapter 15, or the antitrust laws of the United States, 15 USC 1, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
- 24. TEXAS FAMILY CODE CHILD SUPPORT CERTIFICATION:** Pursuant to Texas Family Code Section 231.006 relating to child support, 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.
- 25. DISCLOSURE OF OWNERSHIP INTEREST OR RELATIONSHIP:** Contractor certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Contractor that is a sole proprietorship, the officers or directors of any Contractor that is a corporation, the partners of any Contractor that is a partnership, the joint venturers of any Contractor that is a joint venture, or the members or managers of any Contractor that is a limited liability company, on one hand, and an employee of any institution of The University of Texas System on the other hand, other than the relationships which have been previously disclosed to UTMB in writing, and (ii)

Contractor has not been an employee of any institution of The University of Texas System within the immediate twelve (12) months prior to the submittal deadline, if applicable.

- 26. DISCLOSURE OF INTERESTED PARTIES:** Contractor agrees to comply with §2252.908, Texas Government Code (Disclosure of Interested Parties Statute), and 1 TAC §§46.1 through 46.5 (Disclosure of Interested Parties Regulations), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and UTMB with information required on the form promulgated by TEC. Contractor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php.
- 27. OCCUPATIONAL SAFETY AND HEALTH COMPLIANCE:** Contractor represents and warrants that all products and services offered to UTMB under this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the Texas Hazard Communication Act (Texas Health and Safety Code Chapter 502), and all related regulations in effect or proposed as of the date of this Agreement.
- 28. EQUAL EMPLOYMENT/EQUAL OPPORTUNITY:** Contractor certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action, and that, except for restrooms and wash rooms and one (1) or more lactation rooms each of which is segregated on the basis of sex: (a) it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained; (b) it will not maintain or provide for its employees any segregated facilities at any of its establishments; and (c) it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Contractor understands breach of this certification is a violation of the Equal Opportunity clause. The term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Contractor further agrees that, except where it has contracts prior to this award with subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Contractor will retain the certifications for each one of its subcontractors in Contractor's files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

"NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding \$10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually)."

Contractor understands that the penalty for making false statements regarding the subject matter of this Section is prescribed in 18 U.S.C. 1001.

- 29. EXCLUSION FROM GOVERNMENT CONTRACTING:** Neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from the State of Texas or United States ("U.S.") federal government procurement or non-procurement programs, or are listed in the System for Award Management (SAM) from Federal Procurement or Non-procurement Programs (<https://www.sam.gov/portal/public/SAM>) issued by the U.S. Government. "Principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Contractor will provide immediate written notification to UTMB if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when UTMB issues this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to UTMB, UTMB may terminate this Agreement for default by Contractor.
- 30. EXCLUSION FROM GOVERNMENT HEALTHCARE PROGRAMS:** Contractor acknowledges that UTMB is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Contractor to work on site at UTMB's premises or facilities if that individual is not eligible to work on federal

healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("OIG") to work on site at UTMB's premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at UTMB's premises or facilities. Contractor acknowledges that UTMB will require immediate removal of any employee, representative, agent, or subcontractor of Contractor assigned to work at UTMB's premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG's List of Excluded Individuals. The OIG's List(s) of Excluded Individuals/Organizations can be accessed at: <https://utmb.us/7g>.

- 31. TEXAS HAZARD COMMUNICATION ACT:** Contractor is familiar and in full compliance with the Texas Hazard Communication Act (Texas Health and Safety Code Chapter 502), and will provide either (1) a Material Safety Data Sheet ("MSDS") for each product Contractor, its employees, agents or subcontractors brings on UTMB's premises, or (2) a statement of exemption if the product is not covered by the Texas Hazard Communication Act.
- 32. BEST VALUE PRICING:** The price to be paid by UTMB will be that contained in Contractor's quote, bid or proposal, which Contractor warrants to be no higher than Contractor's current prices on orders by others for goods or services of the kind covered by the Agreement for similar quantities to similar customers under similar conditions. In the event Contractor breaches this warranty, the prices will be reduced to Contractor's current prices on orders by others or, in the alternative, UTMB may cancel this Agreement at its sole option without liability to Contractor.
- 33. OPEN RECORDS:** Contractor is hereby notified that UTMB strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to disclosure of public information. UTMB will consider all information, documentation, and other materials requested to be submitted to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the Texas Public Information Act (Texas Government Code Chapter 552). Contractor will be notified of a request for public information that implicates Contractor's materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. In accordance with §§552.002 and 2252.907, Texas Government Code, and at no additional charge to UTMB, Contractor will make any information created or exchanged with UTMB pursuant to this Agreement (and not otherwise exempt from disclosure under TPIA) available in a format reasonably requested by UTMB that is accessible by the public.
- 34. LOSS OF FUNDING:** Performance by UTMB 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 University of Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or if the Board fails to allocate the necessary funds, then UTMB will issue written notice to Contractor and UTMB may terminate the Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of UTMB.
- 35. ACCESS TO DOCUMENTS:** To the extent applicable to the Agreement, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300 et seq., Contractor will allow, during and for a period of not less than four (4) years after the expiration or termination of the Agreement, access to (i) the Agreement and Contractor's books, documents, and records, and (ii) contracts between Contractor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services, Federal Emergency Management Agency (FEMA), and their duly authorized representatives.
- 36. UTMB'S RIGHT TO AUDIT:** At any time during the term of the Agreement and for a period of four (4) years thereafter, UTMB or a duly authorized audit representative of UTMB, The University of Texas System, or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided under the Agreement. In the event such an audit by UTMB reveals any errors/overpayments by UTMB, Contractor shall refund UTMB the full amount of such overpayments within thirty (30) days of such audit findings, or UTMB, at its sole option, may deduct such overpayments from any amounts UTMB is required to pay Contractor under this or any Agreement.
- 37. 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 Texas Education Code Sections 51.9335(c), 73.115(c) and 74.008(c). 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.

- 38. NON-WAIVER OF DEFAULTS:** Any failure of UTMB to enforce or require the strict keeping and performance of any of the terms and conditions of the Agreement, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions, or rights, and shall not affect or impair the same, or the right of UTMB at any time to avail itself of the same.
- 39. SEVERABILITY:** In the event that any provision of the Agreement, or the application thereof to any person or circumstance, is determined to be invalid, unlawful, or unenforceable to any extent, the remainder of the Agreement, and the application of such provision to persons or circumstances other than those to which it is determined to be unlawful, invalid, or unenforceable to any extent, shall continue to be valid and may be enforced to the fullest extent permitted by law.
- 40. NOTICES:** Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Agreement will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to UTMB: The University of Texas Medical Branch at Galveston
301 University Blvd., Mail Route 0948
Galveston, Texas 77555-0948
Attention: Director of Purchasing

with a copy to: The University of Texas Medical Branch at Galveston
301 University Blvd., Mail Route 0128
Galveston, Texas 77555-0128
Attention: Executive Vice President and Chief Financial Officer

If to Contractor: _____

Attention: _____

or other person or address as may be given in writing by either party to the other in accordance with this Section.

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

The University of Texas Medical Branch at Galveston
301 University Blvd., Mail Route 0948
Galveston, Texas 77555-0948
Fax: (281) 554-5368
Email: purchasing.helpdesk@utmb.edu
Attention: Director of Purchasing

with copy to: The University of Texas Medical Branch at Galveston
301 University Blvd., Mail Route 0124
Galveston, Texas 77555-0124
Fax: (409) 772-1904
Email: cabremon@utmb.edu
Attention: Senior Vice President and Chief Legal Officer

or other person or address as may be given in writing by UTMB to Contractor in accordance with this Section.

41. WARRANTIES: In addition to all warranties established by law, Contractor hereby warrants and agrees that:

- (a) All goods and services covered by the Agreement shall conform to the specifications, drawings, samples or other descriptions set forth herein or otherwise furnished or adopted by UTMB, and shall be merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. UTMB shall have the right of inspection and approval, and may, at Contractor's expense, reject and return non-conforming goods or require re-performance of services which are not in compliance with the requirements of the Agreement. Defects shall not be deemed waived by UTMB's failure to notify Contractor upon receipt of goods or completion of services, or by payment of invoice.
- (b) All articles and/or services provided pursuant to the Agreement shall meet or exceed the Safety Standards established and promulgated under the Federal Occupational Safety and Health Administration (Public Law 91-596) and its regulations in effect or proposed as of the date of the Agreement.
- (c) All goods delivered pursuant to the Agreement shall conform to standards established for such goods in accordance with any applicable federal, state or local laws and regulations, unless otherwise indicated herein.
- (d) The use or sale of any goods delivered hereunder, or any part thereof, except goods produced to UTMB's drawings or specifications, does not infringe any patent, trademark, service mark, copyright, or other third party intellectual property right.

42. PUBLICITY: Contractor agrees that it shall not publicize the Agreement or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of UTMB's employees or patients or use UTMB's name in connection with any sales promotion or publicity event without the prior express written approval of UTMB.

43. PRODUCT RECALL: Contractor shall, immediately upon discovery, advise UTMB of any or all required replacement or modifications to equipment or component part(s) thereof or withdrawal of a product by reason of safety hazard or recall. Any verbal notification must be confirmed in writing within twenty-four (24) hours of such verbal notification. Formal notices must be submitted to the following addresses:

The University of Texas Medical Branch at Galveston
Attn.: Director of Purchasing
301 University Blvd., Mail Route 0948
Galveston, Texas 77555-0948
Tel: (409) 266-1100
Fax: (281) 554-5368
Email: purchasing.helpdesk@utmb.edu

with copies to:

The University of Texas Medical Branch at Galveston
Attn.: Director of Logistics
301 University Blvd., Mail Route 0948
Galveston, TX 77555-0948
Tel.: (409) 772-5544
Fax: (409) 772-1686

The University of Texas Medical Branch at Galveston
Attn.: Risk Management
301 University Blvd., Mail Route 0495
Galveston, TX 77555-0495
Tel.: (409) 722-4775
Fax: (409) 742-6897

44. BREACH OF CONTRACT CLAIMS:

- (a) To the extent that Texas Government Code Chapter 2260, as it may be amended from time to time ("Chapter 2260"), is applicable to the Agreement and is not preempted by other applicable law, the dispute resolution

process provided for in Chapter 2260 will be used, as further described herein, by UTMB and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

1. Contractor's claims for breach of the Agreement that the parties cannot resolve pursuant to other provisions of the Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor will submit written notice, as required by subchapter B of Chapter 2260, to UTMB in accordance with the notice provisions herein. Contractor's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to Contractor's claim, the specific provision which UTMB allegedly breached, the amount of damages Contractor seeks, and the method used to calculate such damages. Compliance by Contractor with subchapter B of Chapter 2260 is a required prerequisite to Contractor's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer of UTMB, or another officer of UTMB as may be designated from time to time by UTMB by written notice to Contractor, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims.
 2. If the parties are unable to resolve a dispute by the manner provided above, the contested case process provided in subchapter C of Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for any and all of Contractor's claims for breach of the Agreement by UTMB.
 3. Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Texas Legislature under Texas Civil Practices and Remedies Code Chapter 107. The parties hereto specifically agree that (i) neither the execution of the Agreement by UTMB nor any other conduct, action or inaction of any representative of UTMB relating to the Agreement constitutes or is intended to constitute a waiver of UTMB's or the State's sovereign immunity to suit, and (ii) UTMB has not waived its right to seek redress in the courts.
- (b) The submission, processing and resolution of Contractor's claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted, or subsequently amended.
- (c) UTMB and Contractor agree that any periods set forth in the Agreement for notice and cure of defaults are not waived.
- 45. ACCESS BY INDIVIDUALS WITH DISABILITIES:** Contractor represents and warrants ("EIR Accessibility Warranty") that any electronic and information resources and all associated information, documentation, and support provided to UTMB by Contractor under the Agreement (collectively, the "EIRs") comply with the applicable (1) [28 C.F.R. Part 35, Subpart H](#) and (2) [1 TAC Chapter 213](#) and [1 TAC §206.70](#) (ref. [Subchapter M, Chapter 2054, Texas Government Code](#) requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, Rule 206.70 of the Texas Administrative Code (as authorized by Texas Government Code Chapter 2054, Subchapter M). To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to UTMB, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty, or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event Contractor is unable to do so, then UTMB may terminate the Agreement without further liability and Contractor will refund to UTMB all amounts UTMB has paid under the Agreement within thirty (30) days of the termination date. [1 TAC §213.38\(g\)](#)
- 46. ACKNOWLEDGMENT OF HIPAA OBLIGATION AND OTHER REGULATIONS IMPLEMENTING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (42 U.S.C. §1320(D) ("HIPAA")):** To the extent Contractor comes into contact with information considered Individually Identifiable Health Information (IIHI) under HIPAA or Protected Health Information (PHI), as regulated by the Department of Health and Human Services (DHHS) through the adoption of standards, 45 CFR Parts 160 and 164 (Privacy Rule) and 45 CFR Parts 160, 162 and 164 (Security Rule), collectively referred to herein as "the HIPAA Rules," as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"), Contractor agrees to keep private and to secure any information considered IIHI or PHI (collectively, "Protected Information") in accordance with federal law.
- (a) Contractor agrees to only use and disclose Protected Information as required to perform the services outlined in the Agreement. Contractor may use and disclose Protected Information for the proper management and

administration of the Contractor's operations and for data aggregation services to the extent permitted by the HIPAA Rules.

- (b) Contractor will not use or further disclose Protected Information other than as permitted or required under the Agreement or as required by law.
- (c) Contractor will use appropriate safeguards to prevent the use or disclosure of Protected Information for any reason other than as provided by the Agreement. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic Protected Information that it creates, receives, maintains or transmits on behalf of UTMB.
- (d) Contractor agrees to promptly notify UTMB of any use or disclosure of Protected Information not provided for in the Agreement of which it becomes aware. Contractor shall report to UTMB any instances, including security incidents, of which it is aware in which Protected Information is used or disclosed for a purpose that is not otherwise provided for in the Agreement or for a purpose not expressly permitted by the HIPAA Rules.
- (e) Contractor shall require any agents or subcontractors who receive Protected Information to be bound by the same restrictions and conditions outlined in the Agreement. Additionally, Contractor shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity and availability of electronic Protected Information that Contractor creates, receives, maintains, or transmits on behalf of UTMB.
- (f) To the extent it is determined Contractor maintains a Designated Record Set, Contractor agrees to follow 45 CFR §§ 164.524 (Access of Individuals to PHI), 164.526 (Amendment of PHI) and 164.528 (Accounting of Disclosures of PHI) of the HIPAA Privacy Rules.
- (g) Contractor agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from UTMB available to the Secretary of Health and Human Services or the Secretary's designee for purposes of determining UTMB's compliance with the HIPAA Privacy Regulations.
- (h) After completion and/or termination of the Agreement, Contractor agrees to return or destroy all Protected Information, if feasible, and, if not feasible, Contractor agrees to continue to protect the Protected Information from wrongful uses and disclosures.
- (i) Contractor understands that UTMB may terminate the Agreement immediately if UTMB determines Contractor violated a material term of the Agreement and Contractor's actions are not successful in remedying the breach. If termination is not feasible UTMB may report the problem to the Secretary of DHHS.
- (j) Contractor may use and disclose de-identified Protected Information if UTMB approves of the use of de-identified Protected Information and the Protected Information is de-identified in compliance with the HIPAA Rules.
- (k) Contractor shall ensure that all uses and disclosures of Protected Information are subject to the principle of "minimum necessary use and disclosure" (i.e., that only Protected Information that is the minimum necessary to accomplish the intended purpose of the use or disclosure is used or disclosed).
- (l) Notwithstanding the foregoing, if the parties have entered into a Business Associate Agreement, the terms of this Section shall be superseded and replaced by the terms of the Business Associate Agreement.

47. ETHICS MATTERS; NO FINANCIAL INTEREST: Contractor and its employees, agents, representatives and subcontractors have read and understand UTMB's Conflicts of Interest Policy (available at <https://utmb.us/75>), UTMB's Standards of Conduct Guide (available at <https://utmb.us/3kw>), and other applicable state ethics laws and rules (available at <https://utmb.us/5z1>). Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause UTMB employees to violate UTMB's Conflicts of Interest Policy, provisions described by UTMB's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of the Agreement.

- 48. UNDOCUMENTED WORKERS:** Contractor understands the federal Immigration and Nationality Act (8 U.S.C. §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 CFR Part 274a). Among other things, Contractor is required to: (1) have all employees complete and sign an 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 law. 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 Contractor employs unauthorized workers during performance of the Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, UTMB may terminate the Agreement immediately without further liability. Contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.
- 49. TRAVEL REIMBURSEMENT:** Contractor acknowledges and agrees that UTMB shall reimburse reasonable and related expenses for travel, lodging, and meals at rates not exceeding the rates established by the State of Texas for its employees. A complete set of the State of Texas guidelines is available at <https://utmb.us/7d>.
- 50. STATE OF TEXAS COMPUTER EQUIPMENT RECYCLING PROGRAM CERTIFICATION:** Pursuant to Texas Health and Safety Code Section 361.965, Contractor certifies that it is full compliance with the State of Texas Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act as set forth in Texas Health and Safety Code Chapter 361, Subchapter Y, and the rules adopted by the Texas Commission on Environmental Quality under that Act as set forth in 30 Texas Administrative Code Chapter 328. Contractor acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.
- 51. UTMB COMPLIANCE PROGRAM:** Contractor acknowledges that UTMB maintains an Institutional Compliance Program and an Institutional Compliance Plan (“Compliance Plan”; available at <https://utmb.us/5z2>) and that UTMB is bound by a number of compliance-related policies, including a conflict of interest policy (“Conflict of Interest Policy”; available at <https://utmb.us/48f>) for certain purposes, including, but not limited to, the purpose of ensuring that the provision of, and billing for, all health care services by UTMB are in full compliance with applicable Federal and State laws. Included in UTMB’s Compliance Program is UTMB’s Vendor Code of Conduct (available at <https://utmb.us/48g>). Contractor acknowledges that its employees, subcontractors, representatives and/or agents will abide by UTMB’s Vendor Code of Conduct, as well as other compliance policies, and Contractor shall fully adhere to and support the policies set forth therein. Contractor further agrees to abide by, and not violate, nor assist any employee of UTMB to violate, any of the Texas ethics laws which can be found at <https://www.ethics.state.tx.us/>. To the extent applicable, Contractor shall participate in training and education sessions relating to the Compliance Program, which shall include training and education sessions related to 42 U.S.C. § 1320a-7b(b) (the “Anti-Kickback Statute”) and 42 U.S.C. § 1395nn (the “Stark Law”) as requested by UTMB. Contractor agrees to, and at all times shall, comply with all laws, rules and regulations impacting Contractor and UTMB. Any UTMB policies, including the Compliance Plan and the Vendor Code of Conduct shall be made available to Contractor in electronic or paper format upon request, as Contractor is responsible for acknowledging and adhering to same. To the extent that any actions of Contractor violate the terms of UTMB’s Vendor Code of Conduct, UTMB may immediately terminate this Agreement for cause.
- 52. COMPLIANCE WITH UT SYSTEM INFORMATION RESOURCES USE AND SECURITY POLICY (UTS165):** Contractor agrees to adhere to all state and federal laws and The University of Texas System (UT System) Board of Regents’ Rules and policies, including UTS165 (<https://utmb.us/8y>), pertaining to the protection of UTMB’s Information Resources and privacy of Sensitive Data, as those terms are defined in UTS165. Further, Contractor represents and warrants that it will:
- Hold all Sensitive Data in the strictest confidence;
 - Not release any Sensitive Data concerning a UTMB student unless Contractor obtains UTMB’s prior written approval and performs such a release in full compliance with all applicable privacy laws, including Family Educational Rights and Privacy Act (FERPA);
 - Not otherwise use or disclose Sensitive Data except as required or permitted by law;

- Safeguard Sensitive Data according to all commercially reasonable administrative, physical, and technical standards (e.g., such standards established by the National Institute of Standards and Technology or the Center for Internet Security);
- Continually monitor its operations and take any action necessary to ensure Sensitive Data is safeguarded in accordance with the terms of UTS165; and
- Comply with the Vendor Access Requirements set forth in UTS 165.

Contractor must provide written notice to UTMB within one (1) business day of Contractor's discovery of any unauthorized use or disclosure of Sensitive Data, and Contractor shall provide all information requested by UTMB or UT System concerning such unauthorized use or disclosure.

Pursuant to Title 1 Texas Administrative Code Section 202.75 (7) and to ensure compliance with UTS165 and state laws and regulations related to the use and security of Information Resources, UTMB, at its sole cost and expense, shall have the right to audit Contractor's systems to ensure that Information Resources and Sensitive Data are adequately protected.

53. CONFIDENTIALITY AND SAFEGUARDING OF UNIVERSITY RECORDS; PRESS RELEASES:

Under the Agreement, Contractor may (1) create, (2) receive from or on behalf of UTMB, or (3) have access to, records or record systems (collectively, "UTMB Records"). However, it is expressly agreed that UTMB will not provide to Contractor, and Contractor will never seek to access, any UTMB Records that contain personally identifiable information regarding any individual that is not available to any requestor under the Texas Public Information Act, Chapter 552, Texas Government Code, including "directory information" as that term is defined under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA") and its implementing regulations. Contractor represents, warrants, and agrees that it will: (1) hold all UTMB Records that it does access pursuant to the Agreement in strict confidence and will not use or disclose UTMB Records except as (a) permitted or required by the Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by UTMB in writing; (2) safeguard UTMB Records according to reasonable administrative, physical and technical standards that are no less rigorous than the standards by which Contractor protects its own confidential information; (3) continually monitor its operations and take any action necessary to ensure that UTMB Records are safeguarded and the confidentiality of UTMB Records is maintained in accordance with all Applicable Laws, and (4) comply with UTMB's rules, policies, and procedures regarding access to and use of UTMB's computer systems. At the request of UTMB, Contractor agrees to provide UTMB with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of UTMB Records.

- (a) Notice of Impermissible Use.** If an impermissible use or disclosure of any UTMB Records occurs, Contractor will provide written notice to UTMB within one (1) business day after Contractor's discovery of that use or disclosure. Contractor will promptly provide UTMB with all information requested by UTMB regarding the impermissible use or disclosure.
- (b) Return of UTMB Records.** Contractor agrees that within thirty (30) days after the expiration or termination of the Agreement, for any reason, all UTMB Records created or received from or on behalf of UTMB will be (i) returned to UTMB, with no copies retained by Contractor; or (ii) if return is not feasible, destroyed. Twenty (20) days before destruction of any UTMB Records, Contractor will provide UTMB with written notice of Contractor's intent to destroy UTMB Records. Within five (5) days after destruction, Contractor will confirm to UTMB in writing the destruction of UTMB Records.
- (c) Disclosure.** If Contractor discloses any UTMB Records to a subcontractor or agent, Contractor will require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Contractor by this Section.
- (d) Press Releases.** Except when defined as part of the Scope of Work, Contractor will not make any press releases, public statements, or advertisement referring to the Agreement or the engagement of Contractor as an independent contractor of UTMB in connection with the Agreement, or release any information relative to the Agreement for publication, advertisement or any other purpose without the prior written approval of UTMB.
- (e) Termination.** In addition to any other termination rights set forth in the Agreement and any other rights at law or equity, if UTMB reasonably determines that Contractor has breached any of the restrictions or

obligations set forth in this Section, UTMB may immediately terminate the Agreement without notice or opportunity to cure.

- (f) **Duration.** The restrictions and obligations under this Section will survive expiration or termination of the Agreement for any reason.

54. RIGHT TO PROTECT INFORMATION RESOURCE SECURITY: UTMB reserves the right to change or modify without consent any information resource, including but not limited to operating systems, hardware, and/or network configuration, in order to protect UTMB's Information Resources against any security vulnerabilities and unauthorized access or abuse. Further, if Contractor will provide maintenance under the Agreement, Contractor warrants that upon routine maintenance and/or notification by UTMB of security vulnerability that such maintenance shall include the installation of operating system and/or application patches and upgrades that will protect UTMB's Information Resources against any security vulnerabilities and unauthorized access or abuse.

55. WARRANTY AGAINST SPYWARE, MALWARE, AND COLLECTION OF PRIVATE INFORMATION: Contractor warrants that products purchased by UTMB do not contain spyware or malware, and that the products do not collect and/or distribute information that could be considered private without UTMB's and the actual users' express consent.

56. REMOTE NETWORK ACCESS FOR MAINTENANCE OR REPAIRS: If Contractor will provide maintenance or repair services under the Agreement, access to UTMB's information resources for remote maintenance or repairs by Contractor or other authorized vendors shall be limited to use of approved network connectivity access methods such as Virtual Private Network or third party remote dial-up access. Access requests to UTMB's Information Services Department on behalf of Contractor or other authorized vendors shall be the responsibility of the information resource owner.

57. IMPLEMENTATION AND/OR MAINTENANCE OF INFORMATION SYSTEMS: To the extent applicable to the services Contractor will provide under the Agreement, any implementation and/or maintenance of information systems shall be performed in accordance with UTMB's Information Resources policies and practice standards as defined by Texas Administrative Code. These standards are published at <https://utmb.us/77>.

58. SOFTWARE INDEMNIFICATION: If Contractor will provide any software under the Agreement, Contractor warrants that it has the full right to grant this entire license to UTMB. At Contractor's expense, Contractor shall hold harmless, indemnify, and defend UTMB against any claim that any software or documentation provided to UTMB by Contractor infringes a patent, copyright, trade secret or other proprietary right of a third party in the United States and shall pay all costs, damages, and attorney's fees that a court finally awards as a result of such claim or that are paid in settlement of such claim. To qualify for such defense and payment, UTMB will: (i) give Contractor prompt written notice of such claim; and (ii) subject to the statutory duty of the Texas Attorney General, allow Contractor to control, and will fully cooperate with Contractor in, the defense against such claim and all related negotiations. In the event such claims are raised against both UTMB and Contractor, UTMB may, at its option and expense, retain its own counsel to act as co-counsel in such defense and related negotiations.

Contractor's obligation under this Section is conditioned upon UTMB's agreement that, if the operation of any software provided by Contractor becomes or, in Contractor's reasonable opinion is likely to become, the subject of such claim, UTMB shall permit Contractor, at Contractor's option and expense, to either procure the right for UTMB to continue to use the software or replace or modify the software so that it becomes non-infringing and such replacement software or modifications meet or exceed the functionality of the original software. In the event Contractor is unwilling or unable to procure the right to use the software or replace or modify it as described above, Contractor shall refund to UTMB any license fees and, if applicable, professional services or installation fees paid to Contractor by UTMB relating to such software.

59. WARRANTY AGAINST SELF DISABLING CODES: If Contractor will provide any software under the Agreement, Contractor warrants that any software it provides shall not be subject to any time-based, activity-based, or event-based self-disabling codes once Contractor has received payment.

60. SOFTWARE ACCEPTANCE: If Contractor will provide any software under the Agreement, upon installation of any software by Contractor, Contractor shall demonstrate to UTMB the operation of the software in UTMB's test and live environments as performing in accordance with the provided documentation and specifications.

- (a) Acceptance of software shall occur after thirty (30) consecutive calendar days of Stable operation following First Productive Use. At UTMB's option, the running of the thirty (30) calendar day period may be halted from time to time for non-Urgent Issue(s), and shall be restarted to day zero for Urgent Issue(s), as defined herein. Upon successful completion of the thirty (30) calendar day period, UTMB shall notify Contractor in writing of UTMB's acceptance of the software, which notice shall not be unreasonably withheld.
- (b) "First Productive Use" shall mean seventy-two (72) hours of continuous operation after the date on which the software is first used with UTMB's live data to perform the intended function of the software. First Productive Use shall be restricted to the live production system and will not include the test systems.
- (c) "Stable" shall mean computer jobs, tasks, transactions or procedures consistently performing in accordance with the provided documentation and specifications ending in a normal mode and not ending abnormally.
- (d) "Urgent Issue" shall mean any issue which results in a loss of major system functionality, a loss of data recovery, or incorrect data as determined by UTMB in its sole discretion.

61. EXTERNAL TERMS: If Contractor will provide any software under the Agreement, the terms and conditions of the Agreement completely supplant, replace, and override all other terms and conditions concerning Contractor's license of software to UTMB and/or Contractor's provision of any other goods or services to the UTMB under the Agreement ("External Terms"). External Terms will have no effect, regardless of whether UTMB or any person or entity expresses assent or agreement to such External Terms. External Terms include any shrinkwrap, clickwrap, browsewrap, electronic terms and conditions of use displayed via the Internet, or other similar terms and conditions displayed in any form that must be agreed to by UTMB or any other person or entity in order to access or use the software or any other goods or services provided by Contractor under the Agreement.

62. HOSTED SERVICES ("CLOUD" SERVICES): If Contractor will provide any services and/or products to UTMB related to the information and/or content owned by UTMB that will not reside on UTMB-owned servers or systems, including patient information, Contractor shall complete a Hosted Services Checklist ("Checklist"). Moreover, Contractor shall consult with both UTMB's Information Services Department and UTMB's Chief Information Security Officer related to the services or products provided to UTMB, and the Checklist must be approved before Contractor may provide any services to UTMB under this Agreement. The Checklist is available at <https://utmb.us/284>.

63. CONTRACTOR COMPLIANCE AND CERTIFICATION RELATING TO CLOUD COMPUTING SERVICES: If Contractor will provide any services and/or products to UTMB related to the information and/or content owned by UTMB that will not reside on UTMB-owned servers or systems, Section 2054.0593 of the Texas Government Code (*enacted by SB 475, 87th Texas Legislature, Regular Session 2021*) requires the Texas Department of Information Resources (DIR) to establish and implement a state risk and authorization management program to provide a standardized approach for security assessment, authorization, and continuous monitoring of cloud computing services that process the data of Texas state agencies. DIR by rule shall prescribe (1) the categories and characteristics of cloud computing services subject to the state risk and authorization management program and (2) the requirements for certification through the program of vendors that provide cloud computing services. DIR shall evaluate vendors to determine whether a vendor qualifies for a certification issued by DIR reflecting compliance with program requirements. Texas state agencies must ensure that each contract for cloud computing services that the agency enters into or renews on or after January 1, 2022, complies with Section 2054.0593.

As a result, Contractor must comply with the requirements of such a state risk and authorization management program and maintain program compliance and certification throughout the term of this Agreement. Contractor understands and agrees that UTMB may not enter into or renew a contract with Contractor to purchase cloud computing services for UTMB that are subject to the state risk and authorization management program unless Contractor demonstrates compliance with program requirements. Contractor acknowledges this Agreement may be terminated and payment withheld if Contractor does not comply with this Section.

64. CYBERSECURITY TRAINING PROGRAM: If Contractor and/or its subcontractors, officers, or employees will have an account on a state computer system (for example, to access a database on that system), then pursuant to Section 2054.5192, Texas Government Code, Contractor and its subcontractors, officers, and employees must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code and selected by UTMB. The cybersecurity training program must be completed by Contractor and its subcontractors,

officers, and employees during the term and any renewal period of this Agreement. Contractor shall verify completion of the program to UTMB.

- 65. DATA SECURITY CONTROLS:** Pursuant to Section 2054.138 of the Texas Government Code effective June 14, 2021 (as enacted by SB 475, 87th Reg. Session of the Texas Legislature) If Contractor will be authorized to access, transmit, use, or store data for UTMB, Contractor is required to meet the security controls UTMB determines are proportionate with UTMB's risk under this Agreement based on the sensitivity of UTMB's data. Contractor must periodically provide to UTMB evidence that Contractor meets the security controls required under this Agreement.
- 66. TECHNOLOGY COMPLIANCE:** All software programs, hand held units, order entry devices, units with bar code scanning capability, electronic order entry (EOE) equipment and software (including without limitation all computer hardware equipment), and other hardware, software, or technology provided by Contractor must be provided and used in compliance with all applicable laws and regulations, including the Texas Governor's Banned Technologies directive (<https://gov.texas.gov/news/post/governor-abbott-announces-statewide-plan-banning-use-of-tiktok>) and Texas Senate Bill 1893, 88th Regular Session (<https://capitol.texas.gov/BillLookup/History.aspx?LegSess=88R&Bill=SB1893>).
- 67. VULNERABILITY SCAN:** UTMB reserves the right to request a vulnerability scan or report for all third party systems or infrastructure elements accessing, manipulating, or storing UTMB data or systems used to connect to UTMB networks or resources. Third parties will provide the vulnerability report upon the request of UTMB.
- 68. DISCRIMINATION PROHIBITED:** UTMB AND CONTRACTOR WILL ABIDE BY THE REQUIREMENTS OF 41 CFR 60-1.4(A), 60-300.5(A) AND 60-741.5(A) (COLLECTIVELY, THE "REGULATIONS"). THE REGULATIONS (1) PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND (2) PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. MOREOVER, THE REGULATIONS REQUIRE THAT UTMB AND CONTRACTOR TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT, INDIVIDUALS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, PROTECTED VETERAN STATUS OR DISABILITY.
- 69. FERPA:** To the extent applicable to the services Contractor will provide under this Agreement and to the extent Contractor may create, receive from or on behalf of UTMB, or have access to, any UTMB education records made confidential under the Family Educational Rights and Privacy Act of 1974 (FERPA), Contractor represents, warrants, and agrees that it will: (1) maintain the confidentiality of UTMB's education records in accordance with FERPA; (2) hold such records in strict confidence and not use or disclose such records except as (a) permitted or required by this Agreement, (b) required by FERPA or other applicable law, or (c) otherwise authorized by UTMB in writing; and (3) employ FERPA compliant privacy and security safeguards with respect to UTMB's education records that Contractor or its subsequent subcontractors will create, maintain, receive, and/or have access to pursuant to this Agreement.
- 70. LIMITATIONS:** THE PARTIES ARE AWARE THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UTMB (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE PART OF THIS AGREEMENT INCLUDING, TERMS AND CONDITIONS RELATING TO LIENS ON UTMB'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, AND TERMS AND CONDITIONS RELATED TO LIMITATIONS WILL NOT BE BINDING ON UTMB EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- 71. CONTRACTOR CERTIFICATION REGARDING BOYCOTTING ISRAEL:** Pursuant to Chapter 2271, Texas Government Code, Contractor certifies Contractor (1) does not currently boycott Israel; and (2) will not boycott Israel during the Term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

72. CONTRACTOR CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS: Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Contractor certifies Contractor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

73. TEXAS PUBLIC INFORMATION ACT - SUBCHAPTER J REQUIREMENTS: Pursuant to Section 552.372 of the Texas Government Code, Contractor must:

- (1) preserve all contracting information (ref. Section 552.003(7), Texas Government Code) related to this Agreement as provided by the records retention requirements applicable to UTMB for the duration of this Agreement;
- (2) promptly provide to UTMB any contracting information related to this Agreement that is in the custody or possession of Contractor on request of UTMB; and
- (3) on completion of this Agreement, either:
 - (A) provide at no cost to UTMB all contracting information related to this Agreement that is in the custody or possession of Contractor; or
 - (B) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to UTMB.

The requirements of Subchapter J, Chapter 552, Government Code (“Subchapter J”) may apply to this Agreement and Contractor agrees that the Agreement can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of Subchapter J.

UTMB may not accept a bid for a contract described by Section 552.371, Texas Government Code or award the contract to an entity that UTMB has determined has knowingly or intentionally failed to comply with Subchapter J in a previous bid or contract described by Section 552.371 unless UTMB determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of Subchapter J.

If Contractor fails to comply with the requirements of Subchapter J applicable to Contractor, then UTMB shall provide written notice to Contractor stating the requirement(s) of Subchapter J that Contractor has violated. Such notice will also advise Contractor that UTMB may terminate this Agreement without further obligation to Contractor if (a) Contractor does not cure the violation on or before the 10th business day after the date UTMB provides the notice, (b) UTMB determines that Contractor has intentionally or knowingly failed to comply with a requirement of that Subchapter J, and (c) UTMB determines that Contractor has not taken adequate steps to ensure future compliance with the requirements of Subchapter J. For purposes of the above, Contractor has taken adequate steps to ensure future compliance with Subchapter J if: (1) Contractor produces contracting information requested by UTMB that is in the custody or possession of Contractor not later than the 10th business day after the date UTMB makes the request and (2) Contractor establishes a records management program to enable Contractor to comply with Subchapter J.

74. FEDERAL REQUIREMENTS FOR TELECOMMUNICATIONS EQUIPMENT OR SERVICES:

- (a) Contractor represents that it will not provide covered telecommunications equipment or services, as defined in 2 CFR § 200.216, to UTMB in the performance of this Agreement or any contract, subcontract, or other contractual instrument resulting from this Agreement.
- (b) In the event Contractor identifies covered telecommunications equipment or services, as defined in 2 CFR § 200.216, used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of this Agreement, or Contractor is notified of such by a subcontractor at any tier or by any other source, Contractor shall report information about the contract, equipment item, and mitigation measures to UTMB within one business day, and provide UTMB with an update within ten business days that includes measures to prevent recurrence.

75. GROUP PURCHASING AUTHORITY:

- (a) UTMB is a health institution of The University of Texas System, which consists of nine universities and six health institutions. The financial terms, scope of work description, and legal terms in this Contract may be extended to additional UT System institutions. Notwithstanding the foregoing, Contractor understands that each institution is a financially separate entity and as such shall be solely responsible for the financial and legal commitments of that institution.

- (b) Texas law authorizes institutions of higher education (Texas Education Code Section 61.003) to use the group purchasing procurement method (Texas Education Code Sections 51.9335 and 74.008). Additional Texas institutions of higher education may therefore elect to enter into a contract with Contractor.

- 76. CONTRACTOR CERTIFICATION REGARDING COVID-19 VACCINATION:** Pursuant to Section 161.0085, Texas Health and Safety Code (enacted by SB 968, 87th Texas Legislature, Regular Session (2021)), Contractor certifies that it does not require a customer 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 Contractor's business. Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 77. CONTRACTOR VERIFICATION REGARDING DISCRIMINATION AGAINST FIREARM ENTITIES OR TRADE ASSOCIATIONS:** If applicable, for contracts or purchase orders over \$100,000. Pursuant to Chapter 2274, Texas Government Code (enacted by SB 19, 87th Texas Legislature, Regular Session (2021)), Contractor verifies (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and (2) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- 78. CONTRACTOR VERIFICATION REGARDING BOYCOTTING ENERGY COMPANIES:** If applicable, for contracts or purchase orders over \$100,000. Pursuant to Chapter 2274, Texas Government Code (enacted by SB 13, 87th Texas Legislature, Regular Session (2021)), Contractor verifies (1) it does not boycott energy companies and (2) it will not boycott energy companies during the term of this Agreement. Contractor acknowledges this Agreement may be terminated and payment withheld if this verification is inaccurate.
- 79. CERTIFICATION REQUIRED BY TEXAS GOVERNOR EXECUTIVE ORDER GA-48:** Pursuant to [Executive Order GA-48 of the Governor of Texas effective November 19, 2024](#), Contractor certifies that it, and, if applicable, any of its holding companies or subsidiaries, is not:
- (a) Listed in Section 889 of the 2019 National Defense Authorization Act (NDAA); or
 - (b) Listed in Section 1260H of the 2021 NDAA; or
 - (c) Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4; or
 - (d) Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.
- 80. DAVIS BACON ACT:**
- (a) All transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
 - (b) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
 - (c) Additionally, Contractors are required to pay wages not less than once a week.
- 81. COPELAND ANTI-KICKBACK ACT:**
- (a) Contractor. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
 - (b) Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - (c) Breach. A breach of the contract clauses above may be grounds for termination of the Agreement, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12."
- 82. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT:**
- Clean Air Act
- (a) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - (b) Contractor agrees to report each violation to UTMB and understands and agrees that UTMB will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- (c) Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- (a) Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (b) Contractor agrees to report each violation to UTMB and understands and agrees that UTMB will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (c) Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

83. SUSPENSION AND DEBARMENT:

- (a) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (b) Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (c) This certification is a material representation of fact relied upon by UTMB. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to UTMB the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (d) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

84. BYRD ANTI-LOBBYING AMENDMENT:

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.