**STEPHEN F. AUSTIN STATE UNIVERSITY**

SERVICES AGREEMENT

Whereas the undersigned Insert Name of Contractor (Contractor) hereby enters into this Agreement (iContracts ######) with Stephen F. Austin State University (SFASU) to provide the following designated services and/or products on the dates agreed to below:

(The kinds and amounts of services to be rendered must be specifically listed and in sufficient detail to clearly describe the services contracted for.)

If Contractor is providing services under this Agreement, Contractor shall, in accordance with Section 2155.4441 of the *Texas Government Code*, purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

Stephen F. Austin State University will provide the above stated Contractor with the following materials to complete the task, all other materials to be supplied by Contractor:

(Describe all materials such as sound equipment, etc., that will be provided to the contractor.)

Contractor also warrants that he/she is qualified to provide the specified services and/or products, as documented by attachments that follow. Stephen F. Austin State University acknowledges that Contractor was asked to provide this service because of his/her expertise in his/her field and not because of his/her official status.

(List attached exhibits such as resumes, etc., if none delete)

This agreement shall begin on date, and shall terminate on date. This agreement may be terminated by either party upon thirty (30) days written notice or immediately by SFASU in the event of breach by Contractor.

All reimbursements and payments depend on any required certifications by Contractor being made or submitted no later than five working days after termination of the contracted services. Reimbursement and payment will be made at the rate specified, subject to satisfactory performance and progress having been determined by the Project Director, designated below. Payment will be made in accordance with Chapter 2251 of the *Texas Government Code*.

Travel:

Contractor shall be responsible for any and all travel expenses.

Contractor shall be reimbursed for travel conducted in the pursuit of this Agreement and appropriate per diem. Documentation of travel costs (original receipts) shall be provided by the contractor for all travel related expenses except mileage on personal automobile. Original receipts are required for travel expenses related to hotel, rental car, commercial coach airfare, parking, taxi, etc. Hotel expenses shall be reimbursed at no more than $93.00 per night, plus taxes. Mileage will be tallied using the shortest route between two points as indicated by Google Maps and shall be reimbursed at a rate of 54.5 cents per mile. Receipts are not required for meals; however, they shall not exceed $51.00 per day. Meals will not be provided unless overnight travel is incurred.

University will pay for the following travel directly:

Honorarium:

Contractor shall receive an honorarium in the amount of $ (words and figures) for contracted services, including any and all preparation time. Contractor, admitted into the country under the Visa Waiver Program, or a B1, B2, WB, or WT visa, hereby agrees and understands that in order to qualify for the honorarium payment this agreement shall not be extended beyond nine (9) days. Contractor further warrants that he has not stayed at any single institution for longer than nine (9) days and has not accepted honorarium payments and/or travel reimbursement from more than five (5) institutions in the preceding six (6) months. Any travel reimbursement or honorarium due under this Agreement shall be provided in accordance with federal law for usual academic activities. This agreement shall not exceed $ (words and figures), excluding travel and per diem as described herein. Notwithstanding, performance by SFASU under this 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 SFASU (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then SFASU will issue written notice to Contractor and SFASU may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of SFASU.

As an independent contractor, Contractor understands and agrees that he/she will not be entitled to any benefits generally available to Stephen F. Austin State University employees. Contractor shall be responsible for all expenses necessary to carry out the services under this agreement, and shall not be reimbursed by SFASU for such expenses except as otherwise provided in this agreement. Contractor warrants and represents that Contractor has full power and authority to enter into and perform this agreement and to make the grant of rights contained herein.

Intellectual Property:

Intellectual Property is not a part of contracted services.

SFASU and Contractor acknowledge and confirm that SFASU has special ordered or commissioned from Contractor the Work referenced above and that no party other than Contractor has rights, titles or interests in the Works. Contractor acknowledges that its services, including works on and contributions to the Work are rendered and made by Contractor at the instigation of SFASU; and all of Contractor’s work and contributions are and at all times shall be regarded as “work made for hire”, as that term is used in the U.S. Copyright Act. Contractor acknowledges and agrees that the Work (and all rights therein, including without limitation copyright) belong to and shall be the sole and exclusive property of SFASU.

If for any reason the Work would not be considered a work made for hire under applicable law, Contractor hereby assigns, transfers, and conveys any and all rights, title, and interest to SFASU, including without limitation all copyrights, patents, rights of reproduction, rights to ownership, and right to secure registrations, renewals, reissues and extensions thereof. As the sole copyright holder of the Work, SFASU maintains and asserts the rights to use, reproduce, incorporate, make derivative works from, and/or edit the Work in any form of medium, expression, or technology now known or hereafter developed, at any time within SFASU’s discretion.

If the Work is one to which the provisions of 17 U.S.C. § 106A apply, Contractor hereby waives and appoints SFASU to assert on Contractor's behalf Contractor's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the Work, in any medium, for university purposes.

Contractor warrants and guarantees to SFASU that the Work is original on his or her part, is not a derivative work of any other work, and is no way a violation or infringement of any copyright belonging to any third party. CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD SFASU, ITS BOARD OF REGENTS, OFFICERS, EMPLOYEES, AFFILIATES AND AGENTS HARMLESS AGAINST ANY LOSS, EXPENSE (INCLUDING ATTORNEY’S FEES AND ALL EXPENSES WHATSOEVER), OR DAMAGE OCCASIONED BY ANY CLAIM, DEMAND, SUIT, RECOVERY, OR SETTLEMENT ARISING OUT OF BREACH OR ALLEGED BREACH OF ANY OF THE WARRANTIES CONTAINED HEREIN OR ARISING OUT OF ANY OTHER FAILURE ON THE PART OF THE CONTRACTOR TO FULFILL ANY OF ITS COVENANTS, PROMISES, REPRESENTATIONS, OR WARRANTIES CONTAINED IN THIS AGREEMENT.

Confidentiality:

During the course of the work and/or services to be provided under this agreement, Contractor may come in contact with confidential information of SFASU. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by SFASU. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify SFASU of any misuse or unauthorized disclosure of its confidential information and upon expiration of this agreement shall return to SFASU all confidential information in Contractor’s possession or control. Contractor shall further comply with all university information security policies that may apply.

FERPA Compliance:

To the extent applicable, Contractor agrees to hold student information, including any personally identifiable student information or education records as those terms are defined under federal law, (“Confidential Data”) in strict confidence and warrants to University that it will use reasonable industry practices to establish and maintain adequate procedures to ensure the confidentiality and privacy of such Confidential Data from unauthorized use or disclosure in violation of the Federal Family Educational Rights and Privacy Act (“The Buckley Amendment or “FERPA”), 20 USC 1232 g and not to use or disclose Confidential Data except as permitted or required by this Contract, as required by law, or as otherwise authorized by University in writing. Contractor further agrees not to use Confidential Data for any purpose other than the purpose for which the disclosure to Contractor was made. Contractor shall continue to maintain the confidentiality and privacy of the Confidential Data retained in its system after cancellation, expiration or other conclusion of this Agreement. Upon termination, cancellation, expiration or other conclusion of this Contract, Contractor shall return all Confidential Data to University or, if return is not feasible, destroy any and all Confidential Data.  If Contractor destroys the information, it shall provide University with a certificate confirming the date of destruction of the data. Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Data received from, or on behalf of University or its students. These measures will be extended by contract to all subcontractors used by Contractor. Contractor shall, within one day of discovery, report to University any use or disclosure of confidential information not authorized by this agreement or in writing by University. Following this report, Contractor will conduct a timely and thorough investigation in an attempt to identify: (i) the nature of the unauthorized use or disclosure, (ii) the data used or disclosed, and (iii) who made the unauthorized use or received the unauthorized disclosure.  At the conclusion of this investigation, Contractor will furnish a confidential written report to University indicating the results of the investigation, what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.

Access to Public Information:

Contractor is required to make any information created or exchanged with SFASU pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in PDF or other format that is accessible by the public at no additional charge to SFASU. Contractor acknowledges that SFASU may be required to post a copy of the fully executed Agreement on its internet website in compliance with Section 2261.253(a)(1), *Texas Government Code.*

Contractor Certifications:

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.

Eligibility to Receive Payment: In accordance with Section 231.006 of the *Texas Family Code* and Sections 2155.004 and 2155.006 of the Texas Government Code, Contractor certifies that it is not ineligible to receive this Agreement any payments under this Agreement and acknowledges that SFASU may terminate this Agreement and/or withhold payment and/or reimbursement if this certification is inaccurate.

Payment of Debt/Delinquency to the State: Contractor certifies that it is not indebted to the State of Texas and is current on all taxes owed to the State of Texas. Pursuant to Sections 2107.008 and 2252.903 of the *Texas Government Code* any payments or reimbursements owed to Contractor under this 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.

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.

Conflict of Interest: Contractor and each person signing on behalf of Contractor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of SFASU’s Board of Regents, nor any employee or person, whose salary is payable in whole or in part by SFASU, has direct or indirect financial interest in the award of the Agreement, or in the services to which the Agreements relates, or in any of the profits, real or potential, thereof.

U.S. Department of Homeland Security’s E-Verify System: By entering into the Agreement, Contractor certifies and ensures that it utilizes and will continue to utilize, for the term of the Agreement, the U.S. Department of Homeland Security’s E-Verify system to determine the eligibility of: (i) all persons employment to perform duties within Texas, during the term of the Agreement; and (ii) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Agreement, within the United States of America. Contractor shall provide, upon request of SFASU, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by Contractor, and Contractor’s subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be terminated, at the discretion of SFASU and at no fault to SFASU, with no prior notification. Contractor shall also be responsible for the costs of any re-solicitation that the SFASU must undertake to replace the terminated Agreement.

Israel Non-Boycott Verification: If the Agreement has a value of $100,000 or more that is to be paid wholly or partly from public funds of University, 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* Chapter 2271, Contractor affirmatively states that is does not boycott Israel and will not boycott Israel during the term of the Agreement, as that term is defined by Section 808.001 (1), *Texas Government Code*.

Compliance: Contractor shall observe and abide by all applicable local, state, and federal laws, regulations, and SFASU policies and procedures.

Subcontracts: Contractor must receive written approval from SFASU prior to subcontracting any of the work under this Agreement. If permitted by SFASU and Contractor subcontracts any of the work set forth in the Agreement, Contractor shall ensure that each subcontractor complies with all provisions of this Agreement. Contractor will remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the products and/or services set forth in the Agreement.

Contracts with Foreign Terrorist Organizations Prohibited: Pursuant to Section 2252.152, *Texas Government Code*, and to the extent applicable, Contractor hereby represents, verifies, and warrants that it does not do business with Iran, Sudan, or any foreign terrorist organization identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153, *Texas Government Code*.

Trafficking of Persons: Under Section 2155.0061, *Texas Government Code*, Contractor certifies that the individual or business entity named in the bid or Agreement is not ineligible to receive the specified Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

Cybersecurity Training Certification: In accordance with Section 2054.5192, *Texas Government Code*, if Contractor, or a subcontractor, officer, or employee of Contractor, will have access to a state computer system or database, then Contractor shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section2054.519, Texas Government Code, as selected by University. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the contract and during any renewal period. Contractor shall verify to the University completion of the program by each such officer, employee, or subcontractor.

Indemnification:

Contractor shall indemnify and hold harmless SFASU and its directors, officers, agents, and employees from and against all liability, loss, expenses (including reasonable litigation costs and attorney fees), or claims for injury or damages arising out of the performance of this Agreement (collectively, “Claim”) to the extent the Claim arises from the negligence, willful act, breach of contract, or violation of law by Contractor, its employees, agents, contractors, or subcontractors.

Risk of Loss:

All work performed by Contractor pursuant to this Agreement will be at Contractor’s exclusive risk until final and complete acceptance of the work by SFASU. In the case of any loss or damage to the work prior to SFASU’s acceptance, such loss or damage will be Contractor’s responsibility. Delivery of any goods to SFASU pursuant to this Agreement must be FOB destination.

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 arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, governmental authority, or any other circumstances (“Force Majeure Occurrence”). Provided, however, in the event of a Force Majeure Occurrence, Contractor agrees to use their best efforts to mitigate the impact of the occurrence so that University may continue to provide mission critical services during the Force Majeure Occurrence.

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), *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.

Title IX:

SFASU strictly adheres to Title IX of the Education Amendments of 1972, the federal Campus Sexual Violence Elimination Act; United States Department of Education regulations and directives; and SFASU’s sexual harassment policy and procedures (“Regulations”).  Specifically, the Regulations apply to all students, employees, visitors, and other third parties on SFASU-controlled property, including institutions and entities with whom SFASU places its students.  Further, such Regulations prohibit unequal treatment on the basis of sex as well as sexual harassment and sexual misconduct. As a condition of employment, enrollment, doing business, or being permitted on the campus, the above-mentioned individuals, organizations, and entities must agree to:  1) Report immediately to the Title IX coordinator any and all claims of sex discrimination or sexual misconduct; 2) Cooperate with SFASU’s Title IX investigation; and, 3) Cooperate fully with all sanctions that SFASU may impose against such individual, organization, or entity, who is found to have violated the Regulations.  If the individual, organization, or entity fails to adhere to any of the aforementioned requirements, SFASU reserves the right to take appropriate action, including but not necessarily limited to, immediate removal from campus; discipline of employees and students (including termination of employment and/or expulsion from school); and termination of business or contractual relationships.

Sovereign Immunity:

The Parties stipulate and agree that no provision of, or any part of this Agreement between SFASU and Contractor, or any subsequent change order, amendment, or other Agreement modification shall be construed: (1) as a waiver of the doctrine of sovereign immunity or immunity from suit as provided for in the Texas Constitution and the Laws of the State of Texas; (2) to extend liability to University beyond such liability provided for in the Texas Constitution and the Laws of the State of Texas; or (3) as a waiver of any immunity provided by the 11th Amendment or any other provision of the United States Constitution or any immunity recognized by the Courts and the laws of the United States.

Governing Law; Dispute Resolution:

This Agreement and the applicable statute of limitations for any disputes under this Agreement shall be brought in a court of competent jurisdiction in Nacogdoches County, Texas and governed by Texas law. To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by SFASU and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Vice President for Finance & Administration of SFASU shall examine Contractor’s claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, (ii) neither the issuance of this Agreement by SFASU nor any other conduct, action or inaction of any representative of SFASU relating to this contract constitutes or is intended to constitute a waiver of SFASU’s or the state’s sovereign immunity to suit; and (iii) SFASU has not waived its right to seek redress in the courts.

This agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, and understanding, oral or written between the parties relating to this agreement. This agreement may not be modified except by mutual written agreement of the parties executed subsequent to this agreement.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Project Director Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, University: Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Contractor Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_