

APPENDIX ONE; SECTION 5

FELONY CONVICTION NOTIFICATION FORM

APPENDIX ONE; SECTION 5
FELONY CONVICTION NOTIFICATION FORM

TYLER JUNIOR COLLEGE DISTRICT
REQUEST FOR PROPOSALS NO. J2120-17-09
FELONY CONVICTION NOTIFICATION

.....

State of Texas Legislative Senate Bill No. 1, Section 44.034, Notification of Criminal History, Subsection (a), states "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Subsection (b) states "a school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (1) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the Contract."

This notice is not required of a publicly-held corporation

.....

I certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge.

NAME: _____

A. I have not been convicted of a felony.

Signature: _____ **Date:** _____

B. I have been convicted of a felony.

Name of Felon (s): _____
Details of Conviction (s): _____

Signature: _____ **Date:** _____

C. The associated firm (or practice) is owned or operated by the following individual(s) who has/have been convicted of a felony.

Name of Felon (s): _____
Details of Conviction (s): _____

Signature: _____ **Date:** _____

APPENDIX TWO

PROPOSED DRAFT AGREEMENT

TJC has attached a draft Agreement in conjunction with the award of a contract with the selected vendor. AS PART OF YOUR RESPONSE TO THIS RFP (REFERENCE APPENDIX ONE, SECTION 3.3.2), YOU MUST IDENTIFY, IN WRITING, ANY EXCEPTIONS OR ADDITIONS YOU MAY HAVE TO THE PROVISIONS OF THE AGREEMENT. Any desired changes are to be specific and cite the applicable section. If none, so indicate in your response. Acceptance of the terms and conditions of the Agreement is considered as a major factor in the selection of the successful vendor.

DRAFT AGREEMENT BETWEEN COLLEGE AND CONTRACTOR

This Agreement between College and Contractor ("**Agreement**") is made and entered into effective as of September 1, 2017, (the "**Effective Date**"), by and between **Tyler Junior College**, a public junior college authorized under the laws of the State of Texas ("**TJC**"), and _____ ("**Contractor**"), Federal Tax Identification Number _____.

In consideration of the mutual promises and covenants contained in this Agreement, TJC and Contractor agree as follows:

1. Scope of Work.

- 1.1 Contractor will perform the scope of the work ("**Work**") set forth in **Schedule 1**, Scope of Work for an Anti-Plagiarism Software, attached and incorporated for all purposes, to the satisfaction of TJC. Time is of the essence in connection with this Agreement. TJC will have no obligation to accept late performance or waive timely performance by Contractor.
- 1.2 Contractor will obtain, at its own cost, any and all approvals, licenses, filings, registrations and permits required by federal, state or local laws, regulations or ordinances, for the performance of the Work.

2. The Project.

The Work will be provided in connection with **Schedule 1**, Scope of Work for an Anti-Plagiarism Software, and all other related, necessary and appropriate services (the "**Project**").

3. Time for Commencement and Completion.

The term of this Agreement will be a total of five (5) years; a two (2) year initial term, plus three (3) one-year optional renewals.

4. Contractor's Obligations.

- 4.1 Contractor will perform the Work in compliance with all applicable federal, state and local, laws, regulations, and ordinances. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, or anyone acting for the firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or Federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor's response to TJC's procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 4.2 Contractor represents, warrants and agrees that (a) it will use its best efforts to perform the Work in a good and workmanlike manner and in accordance with the highest standards of Contractor's profession or business, and (b) all of the Work to be performed will be of the quality that prevails among similar businesses of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances.
- 4.3 Contractor will maintain a staff of properly trained and experienced personnel to ensure satisfactory performance under this Agreement. Contractor will cause all persons connected

with Contractor directly in charge of the Work to be duly registered and/or licensed under all applicable federal, state and local, laws, regulations, and ordinances. Contractor will assign to the Project a designated representative who will be responsible for the administration and coordination of the Work.

- 4.4 Contractor represents that if (i) it is a corporation, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, limited liability partnership, or limited liability company, then it has all necessary power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 4.5 Contractor represents and warrants that neither the execution and delivery of this Agreement by Contractor nor the performance of its duties and obligations under this Agreement will (a) result in the violation of any provision [i] if a corporation, of Contractor's articles of incorporation or by-laws, [ii] if a limited liability company, of its articles of organization or regulations, or [iii] if a partnership, of any partnership agreement by which Contractor is bound; (b) result in the violation of any provision of any agreement by which Contractor is bound; or (c) to the best of Contractor's knowledge and belief, conflict with any order or decree of any court or other body or authority having jurisdiction.
- 4.6 Contractor represents and warrants that: (i) the Work will be performed solely by Contractor, its full-time or part-time employees during the course of their employment, or independent contractors who have assigned in writing all right, title and interest in their work to Contractor for the benefit of TJC; (ii) TJC will receive free, good and clear title to all Work Material developed under this Agreement; (iii) the Work Material and the intellectual property rights protecting the Work Material are free and clear of all encumbrances, including security interests, licenses, liens, charges or other restrictions; (iv) the Work Material will not infringe upon or violate any patent, copyright, trade secret, trademark, service mark or other property right of any former employer, independent contractor, client or other third party; and (v) the use, reproduction, distribution, or modification of the Work Material will not violate the rights of any third parties in the Work Material, including trade secret, publicity, privacy, copyright, trademark, service mark and patent rights.

5. **The Contract Amount.**

- 5.1 Notwithstanding the foregoing, the cumulative amount of Service Fees remitted by TJC to Contractor will not exceed \$TBD ("**Fee Cap**") without the prior written approval of TJC.
- 5.2 TJC is exempt from Texas Sales & Use Tax on the Services in accordance with Section 151.309, *Texas Tax Code*, and Title 34 *Texas Administrative Code* ("**TAC**") Section 3.322.

6. **Payment Terms.**

- 6.1 At the end of each calendar month during the term of this Agreement, Contractor will submit to TJC an invoice (each a "**Progress Payment**") covering the Services performed

for TJC to that date, which application will be accompanied by documentation that TJC may reasonably request to support the invoice amount. TJC will, within twenty-one (21) days after the date TJC receives the invoice and supporting documentation for payment, approve or disapprove the amount reflected in the invoice, and if TJC approves the amount or any portion of the amount, TJC will promptly pay to Contractor the amount approved in accordance with Chapter 2251, *Texas Government Code*. If TJC disapproves any amount invoiced by Contractor, TJC will give Contractor specific reasons for its disapproval in writing within twenty-one (21) days after the date TJC receives the invoice and supporting documentation for payment.

- 6.2 Within ten (10) days after termination of this Agreement, Contractor will submit a Final Invoice ("**Final Invoice**") which will set forth all amounts due and remaining unpaid to Contractor, and upon approval of the Final Invoice by TJC, TJC will pay Final Payment ("**Final Payment**") to Contractor the amount due under the Final Invoice.
- 6.3 Notwithstanding any provision to the contrary, TJC will not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor if any one or more of the following conditions exist:
 - 6.3.1 Contractor is in breach or default under this Agreement; or
 - 6.3.2 Any part of the payment is attributable to Services which are not performed in accordance with this Agreement; provided, however, payment will be made as to the part attributable to Services which are performed in accordance with this Agreement.
- 6.4 The cumulative amount of all Progress Payments and the Final Payment (defined below) will not exceed the Contract Amount, as more particularly set forth in the 5.1_Fee Cap.
- 6.5 No payment made by TJC will (a) be construed to be final acceptance or approval of that part of the Work to which the payment relates, or (b) relieve Contractor of any of its duties or obligations under this Agreement.
- 6.6 The acceptance of Final Payment by Contractor will constitute a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the Final Invoice for payment.
- 6.7 TJC will have the right to verify the details set forth in Contractor's invoices and supporting documentation, either before or after payment, by (a) inspecting the books and records of Contractor at mutually convenient times; (b) examining any reports with respect to the Project; and (c) other reasonable action.
- 6.8 Except for the obligation of TJC to pay Contractor certain amounts pursuant to the terms of this Agreement, TJC will have no other liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of TJC to Contractor, no present or future agent, officer, director, employee, or TJC Board of Trustees, or anyone claiming under TJC, has or will have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

7. **Appointment.**

TJC hereby expressly reserves the right from time to time to designate, by notice to Contractor, a representative to act partially or wholly for TJC in connection with the performance of TJC's obligations hereunder. Contractor will act only upon instructions from that representative unless otherwise specifically notified to the contrary.

8. **Default and Termination.**

8.1 In the event of a material failure by Contractor to perform in accordance with the terms of this Agreement, TJC may terminate this Agreement at any time upon giving ten (10) days' advance written notice to Contractor setting forth the nature of Contractor's failure.

8.2 TJC may, without cause, terminate this Agreement at any time upon giving seven (7) days advance written notice to Contractor. Upon termination pursuant to this Section, Contractor is entitled to payment of an amount that will compensate Contractor for Services satisfactorily performed from the time of the last payment to the termination date in accordance with this Agreement. TJC is not required to reimburse Contractor for any Services performed or expenses incurred after the termination date.

8.3 Termination under **Sections 8.1 or 8.2** does not relieve Contractor or any of its employees from liability for violations of this Agreement or any other act or omission of Contractor. No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination.

8.4 TJC is entitled (but not obligated) to cure any default of Contractor and has the right to offset against all amounts due to Contractor any and all reasonable expenses incurred in connection with curative actions.

8.5 In the event that this Agreement is terminated, then within thirty (30) days after termination, Contractor will reimburse TJC for all fees paid by TJC to Contractor that were (a) not earned by Contractor prior to termination, or (b) for goods or services that TJC did not receive from Contractor prior to termination.

8.6 In addition, if at any time an involuntary petition of bankruptcy is filed against Contractor and not dismissed within thirty (30) days, or if Contractor files a voluntary petition in bankruptcy, takes advantage of any insolvency law, or if a receiver or trustee is appointed and the appointment is not vacated within thirty (30) days, TJC has the right to terminate this Agreement upon fifteen (15) days advance written notice to Contractor, in addition to any other rights of any nature that TJC may have at law or in equity.

9. **Indemnification.**

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY TJC, AND HOLD HARMLESS TJC, AND THEIR RESPECTIVE AFFILIATED ENTERPRISES, BOARD OF TRUSTEES, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "**INDEMNITEES**") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "**CLAIMS**") BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY,

OR RESULTING FROM CONTRACTOR'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY MALPRACTICE, NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ANYONE DIRECTLY EMPLOYED BY CONTRACTOR OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY.

10. Assignment of Overcharge Claims.

Contractor hereby assigns to TJC any and all claims for overcharges associated with this Agreement arising under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq., or arising under the antitrust laws of the State of Texas, *Texas Business and Commerce Code*, Sections 15.01, et seq.

11. Insurance.

11.1 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 TJC may require:

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

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

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

11.1.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 100,000
Medical Expenses (any one person)	\$ 10,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

Policy will include independent contractor's liability, covering, but not limited to, the liability assumed under the indemnification provision of this contract, fully insuring Contractor's (or Subcontractor's) liability for bodily injury (including death) and property damage. Contractor's Risk Management will issue a letter naming TJC as an insured for liability purposes.

11.1.3 Professional Liability Insurance with limits of not less than \$1,000,000 per claim to include Violations of Privacy.

11.2 Contractor will deliver to TJC:

11.2.1 Evidence satisfactory to TJC in its sole discretion, evidencing the existence of all insurance after the execution and delivery of this Agreement and prior to the performance or continued performance of any services to be performed by Contractor under this Agreement.

Additional evidence, satisfactory to TJC in its sole discretion, of the continued existence of all insurance not less than thirty (30) days prior to the expiration of any insurance. Insurance policies, with the exception of Workers' Compensation and Employer's Liability, will be endorsed and name TJC as an Additional Insured. All policies will be endorsed to provide a waiver of subrogation in favor of TJC. All policies with the exception of Workers' Compensation and Employer's Liability will be endorsed to provide primary and non-contributory coverage. No policy will be canceled until after thirty (30) days' unconditional written notice to TJC.

Contractor will be responsible for providing to TJC immediate notice of its receipt of a notice of cancellation, termination, material change, or non-renewal relating to any insurance policy required herein. This requirement may be satisfied by providing a copy of the notice received by the Contractor to the TJC within two business days or by endorsement of the policy to require notice to the TJC to be provided by the insurer.

11.3 The insurance policies required in this Agreement will be kept in force for the periods specified below:

11.3.1 Commercial General Liability Insurance; will be kept in force until receipt of Final Payment by TJC to Contractor; and

11.3.2 Workers' Compensation Insurance and Employer's Liability Insurance will be kept in force until the Work has been fully performed and accepted by TJC in writing.

12. Miscellaneous.

12.1 **Assignment and Subcontracting** - This Agreement is a personal service contract for the services of Contractor. The Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, and any attempt to do so will (a) not be binding on TJC; and (b) be a breach of this Agreement. The benefits and burdens of this Agreement are assignable by TJC.

12.2 **Franchise 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.

- 12.3 **Taxes** - Contractor will pay when due all taxes or assessments applicable to Contractor. Contractor will comply with the provisions of all Applicable Laws related to taxes and taxing authority.
- 12.4 **Equal Opportunity** - Pursuant to Applicable Laws, Contractor represents and warrants that it is an Equal Opportunity Employer and does not discriminate on the basis of race, color, religion, national origin, age, mental or physical disability, or sex.
- 12.5 **Compliance with Law** - Contractor is aware of, fully informed about and in full compliance with its obligations under with all applicable, federal, state and local, laws, regulations, codes, ordinances and orders and with those of any other body or authority having jurisdiction (“**Applicable Laws**”), 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), *Vietnam Era Veterans Readjustment Act of 1974*, as amended (41 CFR 60-250), *Rehabilitation Act of 1973*, as amended (41 CFR 60-741), *Age Discrimination Act of 1975* (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), *Fair Labor Standards Act of 1938*, Sections 6, 7, and 12, as amended, *Immigration Reform and Control Act of 1986*, Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 95-507), *Americans with Disabilities Act of 1990* (42 USC 12101 et seq.), *Civil Rights Act of 1991*, *Occupational Safety and Health Act of 1970*, as amended (PL 91-596), *Immigration and Nationality Act* (8 *United States Code* 1324a) and all other applicable laws. Contractor represents and warrants that neither Contractor nor any firm, corporation or institution represented by Contractor, nor anyone acting for that firm, corporation or institution, (1) has violated the antitrust laws of the State of Texas, Chapter 15, *Texas Business and Commerce Code*, or federal antitrust laws, or (2) has communicated directly or indirectly the content of Contractor’s response to TJC’s procurement solicitation to any competitor or any other person engaged in a similar line of business during the procurement process for this Agreement.
- 12.6 **Changes to the Agreement; Modifications** - This agreement and each of its provisions will be binding upon the parties and may not be modified, waived or amended unless mutually agreed to in writing by the persons who executed this Agreement or their replacements or designees.
- 12.7 **Loss of Funding** - Performance by TJC under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “**Legislature**”) and allocation of funds by TJC. If the Legislature fails to appropriate or allot the necessary funds, or TJC fails to allocate the necessary funds, then TJC will issue written notice to Contractor and TJC may terminate this Agreement without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of TJC.
- 12.8 **Entire Agreement** - This Agreement supersedes all prior agreements, written or oral, between Contractor and TJC and will constitute the entire Agreement and understanding between the parties with respect to the subject matter of this Agreement.
- 12.9 **Force Majeure** – The performance of either party’s obligations will be suspended to the extent and for the length of time that the party is prevented from performing due to acts of nature, fires, governmental actions, changes in the Service requirements which directly contribute to a delay, or other events beyond its reasonable control. In the event of any

occurrence that a party considers to be the cause of a delay or failure of performance, the party affected shall promptly notify the other party.

- 12.10 **Captions** - The captions of sections and subsections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.
- 12.11 **Venue; Governing Law** - Smith County, Tyler Texas, will be the proper place of venue for suit on or in respect to this Agreement. This Agreement and all of the rights and obligations of the parties and all of the terms and conditions will be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.
- 12.12 **Waivers** - No delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.
- 12.13 **Confidentiality and Safeguarding of TJC Records; Press Releases; Public Information** - Under this Agreement, Contractor may (1) create, (2) receive from or on behalf of TJC, or (3) have access to, records or record systems (collectively, “**TJC Records**”). Among other things, TJC Records may contain social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Laws, including the Gramm-Leach-Bliley Act (Public Law No: 106-102), the Texas Identity Theft Enforcement and Protection Act (“**ITEPA**”), and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (“**FERPA**”). If TJC Records are subject to FERPA, (1) TJC designates Contractor as a TJC official with a legitimate educational interest in TJC Records, and (2) Contractor acknowledges that its improper disclosure or re-disclosure of personally identifiable information from TJC Records will result in Contractor’s exclusion from eligibility to contract with TJC for at least five (5) years. Contractor represents, warrants, and agrees that it will: (1) hold TJC Records in strict confidence and will not use or disclose TJC Records except as (a) permitted or required by this Agreement, (b) required by Applicable Laws, or (c) otherwise authorized by TJC in writing; (2) safeguard TJC Records according to reasonable administrative, physical and technical standards (such as standards established by (i) the National Institute of Standards and Technology and (ii) the Center for Internet Security, as well as the Payment Card Industry Data Security 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 assure that TJC Records are safeguarded and the confidentiality of TJC Records is maintained in accordance with all Applicable Laws, including FERPA, ITEPA and the Gramm-Leach Bliley Act, and the terms of this Agreement; and (4) comply with TJC’s rules, policies, and procedures regarding access to and use of TJC’s computer systems. At the request of TJC, Contractor agrees to provide TJC with a written summary of the procedures Contractor uses to safeguard and maintain the confidentiality of TJC Records.
- 12.13.1 **Notice of Impermissible Use** - If an impermissible use or disclosure of any TJC Records occurs, Contractor will provide written notice to TJC within one (1) business day after Contractor’s discovery of that use or disclosure. Contractor will promptly provide TJC with all information requested by TJC regarding the impermissible use or disclosure.

- 12.13.2 **Return of TJC Records** - Contractor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all TJC Records created or received from or on behalf of TJC will be (1) returned to TJC, with no copies retained by Contractor; or (2) if return is not feasible, destroyed. Twenty (20) days before destruction of any TJC Records, Contractor will provide TJC with written notice of Contractor's intent to destroy TJC Records. Within five (5) days after destruction, Contractor will confirm to TJC in writing the destruction of TJC Records. Any such destruction will be done in compliance with the requirements of ITEPA or the Gramm-Leach Bliley Act.
- 12.13.3 **Disclosure** - If Contractor discloses any TJC 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.
- 12.13.4 **Press Releases** - Except when defined as part of the Work, Contractor will not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of TJC in connection with the Project, or release any information relative to the Project for publication, advertisement or any other purpose without the prior written approval of TJC.
- 12.13.5 **Public Information** - TJC strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the *Texas Public Information Act*, Chapter 552, *Texas Government Code*.
- 12.13.6 **Termination** - In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if TJC reasonably determines that Contractor has breached any of the restrictions or obligations set forth in this Section, TJC may immediately terminate this Agreement without notice or opportunity to cure. Contractor agrees that its violation of these confidentiality provisions entitles TJC to injunctive relief without the necessity of posting a bond, in order to prevent or remedy the breach.
- 12.13.7 **Duration** - The restrictions and obligations under this Section will survive expiration or termination of this Agreement for any reason.
- 12.13.8 **HIPAA Compliance** – Contractor agrees to comply with the privacy and security provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and related regulations to the extent that they are applicable to this transaction. Contractor further agrees to execute any other documents that may be required or reasonably necessary under HIPAA and its regulations.
- 12.13.9 **FERPA Compliance** – Contractor agrees, to the extent applicable, to comply with all laws regarding the confidentiality of the students' educational records, including but not limited to the Family Educational Rights and Privacy Act (“FERPA”) and to comply with all applicable laws in safeguarding any non-public, sensitive, and/or confidential information of the College's faculty and students which is in its control.

- 12.13.10 **Higher Education Act** – Contractor, to the extent applicable, will be subject to the Higher Education Act (“HEA”), including but not limited to 422(g)(2) of HEA, 20 U.S.C. 1072(g)(2), Title IV, Part D of the HEA and administered by the United States Department of Education. It shall be the sole responsibility of Contractor to fully comply with the HEA with respect to all work and services performed under the agreement. To the extent that Contractor, its employees, agents, subcontractors or representatives violate the HEA in any way, Contractor will agree to indemnify, hold harmless, and defend College, its Board of Trustees, and employees for any and all damages, claims, fines, penalties, causes of action, lawsuits, attorneys’ fees, costs, injuries or liability arising from or related to such violation.
- 12.14 **Binding Effect** - This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.
- 12.15 **Records** - Contractor agrees that TJC, or any of its duly authorized representatives, at any time during the term of this Agreement, will have access to, and the right to audit and examine, any pertinent books, documents, papers, and records of Contractor (such as sales receipts, salary lists, itemized expenses and disbursements, time reports, equipment charges, overtime reports, etc.), and related Contractor's charges incurred in its performance under this Agreement. Such records will be kept by Contractor for a period of four (4) years after Final Payment under this Agreement. Contractor agrees to refund to TJC any overpayments disclosed by any audits.
- 12.16 **Notices** - Except as otherwise provided in this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement will be in writing and will be sent via registered or certified mail, overnight courier, confirmed facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below), and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one business day after delivery to the courier, (iii) if sent by facsimile (to the extent a facsimile number is set forth below), when transmitted, and (iv) if sent by email (to the extent an email address is set forth below), when received:

To TJC: **Tyler Junior College**
Attn: Campus Services
P. O. Box 9020
Tyler, Texas 75711
903-510-2420

If to Contractor: _____

Attention: _____

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

12.17 **Severability** - In case any provision of this Agreement will, for any reason, be held invalid or unenforceable in any respect, the invalidity or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if the invalid or unenforceable provision had not been included.

12.18 **Representations and Warranties by Contractor** - 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 this Agreement, and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.

12.19 **Breach of Contract Claims**

12.19.1 To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("**Chapter 2260**"), is applicable to this Agreement and is not preempted by other Applicable Laws, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by TJC and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

12.19.1.1 Contractor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this 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 TJC in accordance with the notice provisions in this Agreement. 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 the claim, the specific contract provision that TJC allegedly breached, the amount of damages Contractor seeks, and the method used to calculate the 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 Director of Purchasing and Contracts of TJC, or the other officer of TJC as may be designated from time to time by TJC by written notice thereof to Contractor in accordance with the notice provisions in this Agreement, will examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve the claims.

12.19.1.2 If the parties are unable to resolve their disputes under Section 8, 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 this Agreement by TJC.

12.19.1.3 Compliance with the contested case process provided in Subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by TJC nor any other conduct, action or inaction of any representative of TJC relating to this Agreement constitutes or is intended to constitute a waiver of TJC's or the state's sovereign immunity to suit and (ii) TJC has not waived its right to seek redress in the courts.

12.19.2 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.

12.19.3 TJC and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

12.20 **Undocumented Workers** - The *Immigration and Nationality Act* (8 *United States Code* 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 *Code of Federal Regulations* 274a). Among other things, Contractor is required to: (1) have all employees complete and sign the 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 Applicable Laws. 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 this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by Applicable Laws, TJC may terminate this Agreement in accordance with **Section 8** of this Agreement. 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.

12.21 **Limitations** - THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF TJC TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THOSE TERMS AND CONDITIONS RELATING TO LIENS ON TJC'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; ON; INDEMNITIES; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON TJC EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

- 12.22 **Ethics Matters; No Financial Interest** - Contractor and its employees, agents, representatives and subcontractors have read and understand TJC's Conflicts of Interest Policy available at <http://www.tasb.org/policy/pol/private/212501/pol.cfm?idx=C>. Neither Contractor nor its employees, agents, representatives or subcontractors will assist or cause TJC employees to violate TJC's Conflicts of Interest Policy, provisions described by TJC's Standards of Conduct Guide, or applicable state ethics laws or rules. Contractor represents and warrants that no member of the Board of Trustees has a direct or indirect financial interest in the transaction that is the subject of this Agreement.
- 12.23 **Prohibitions** – TJC provides a friendly, tobacco-free and vapor-free environment at all of its campuses and satellite facilities. Contractor agrees to fully comply with TJC's no tobacco or vapor policy and to ensure compliance of same by all employees or subcontractors of Contractor or anyone else performing under this Agreement on its behalf. TJC's campuses are an alcohol, drug, tobacco, vapor, and firearm-free zone. These items are prohibited on the campus and satellite facilities.
- 12.24 **Debarment** - Contractor confirms that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government Procurement or Nonprocurement Programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.epls.gov/>) issued by the U.S. General Services Administration. "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 TJC 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 TJC executes this Agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to TJC, TJC may terminate this Agreement for default by Contractor.
- 12.25 **Office of Inspector General Certification** - Contractor acknowledges that TJC is prohibited by federal regulations from allowing any employee, subcontractor, or agent of Contractor to work on site at TJC's premises or facilities if that individual is not eligible to work on federal healthcare programs such as Medicare, Medicaid, or other similar federal programs. Therefore, Contractor will not assign any employee, subcontractor or agent that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General ("OIG") to work on site at TJC's premises or facilities. Contractor will perform an OIG sanctions check quarterly on each of its employees, subcontractors and agents during the time the employees, subcontractors and agents are assigned to work on site at TJC's premises or facilities. Contractor acknowledges that TJC will require immediate removal of any employee, subcontractor or agent of Contractor assigned to work at TJC's premises or facilities if the employee, subcontractor or agent is found to be on the

OIG's List of Excluded Individuals. The OIG's List of Excluded Individuals may be accessed through the following Internet website: http://www.oig.hhs.gov/fraud/exclusions/exclusions_list.asp

12.26 **Access to Documents** - To the extent applicable to this 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 this Agreement, access to this Agreement and its books, documents, and records; and 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 and their duly authorized representatives.

12.27 **Notice of Participation** - Other local, governmental and private entities within the State of Texas who wish to participate under similar terms and conditions contained in this document may do so. TJC may retract pricing and other sensitive information and shall inform Contractor in advance of another entity's desire to participate using this document. Each entity wishing to participate must sign an addendum to this contract stating payment terms, conditions and varying terms specific to that entity. If such participation is desired by an eligible entity, all purchase orders will be produced by that entity and all goods and/or services will be provided directly to that entity.

IN WITNESS WHEREOF, duly authorized representatives of TJC and Contractor have executed and delivered this Agreement effective as of the Effective Date.

CONTRACTOR:

TJC:

TYLER JUNIOR COLLEGE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Contract Review:

ATTACHMENTS TO THIS CONTRACT TO BE INCLUDED AT EXECUTION:

- SCHEDULE 1** - Scope of Work for the online Anti-Plagiarism Tool
- SCHEDULE 2** – Pricing Proposal
- SCHEDULE 3** – Execution of Offer
- SCHEDULE 4** - Insurances