

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE UNIVERSITY OF NORTH TEXAS HEALTH SCIENCES CENTER,
FORT WORTH
AND
JIM VITALE & ASSOCIATES, INC.**

This Agreement (the "Agreement"), is made and entered into by and between *The University of North Texas Health Sciences Center, Fort Worth*, an agency and institution of higher education organized under the laws of the State of Texas ("University and/or UNTHSC"), for and on behalf of the Board of Regents of The University of North Texas System and *Jim Vitale & Associates*, a corporation, with its address at P. O. Box 550, Johnstown, Colorado 80534 (P.O. Box 550, Johnstown, Colorado 80534) ("Contractor").

University and Contractor hereby agree as follows:

1. Scope of Work

- a. The scope of the work ("Work") is as set forth in **Exhibit A** attached and incorporated for all purposes. The time for performance of the Work is as set forth in **Exhibit B** attached and incorporated for all purposes.
- b. Upon execution of this Agreement, all services previously performed by Contractor on behalf of University and included in the description of the Work shall become a part of the Work and shall be subject to the terms and conditions hereof.

2. The Project

The Work as described in **Exhibit A** shall consist of audit services by Contractor relating to the University's compliance with Appendix A to 2 CFR Part 220, sections E.2.d. and F, and other related necessary and appropriate services related to financial account and transaction coding methodology, and as agreed to by the parties ("Project").

3. Time for Commencement and Completion

Regardless of the date of execution, the initial term of this Agreement shall commence on the November 1, 2021. University shall have the option to renew or amend this Agreement.

It is understood that time is of the essence of this Agreement and that Contractor shall complete all authorized Work in accordance with the time for performance described for the Work, and in a minimum of time consistent with the highest customs, standards, and practices of Contractor's business or profession. Work is to commence as set forth in **Exhibit B** ("Schedule") attached hereto, and shall be substantially complete as set forth in **Exhibit B** ("Schedule") attached hereto.

4. **Contractor's Duties and Representations**

- a. Notwithstanding anything to the contrary contained in this Agreement, University and Contractor agree and acknowledge that University is entering into this Agreement in reliance on Contractor's special and unique abilities with respect to performing the Work. The Contractor accepts the relationship of trust and confidence established between it and the University by this Agreement. Contractor covenants with University to use its best efforts, skill, judgment, and abilities to perform the Work and to further the interests of University in accordance with University's requirements and procedures with due professional care and skill in accordance with the highest standards of the Contractor's profession or business and in compliance with all applicable national, federal, state, and municipal laws, regulations, codes, ordinances, and orders and with those of any other authority having jurisdiction over the Work or the Contractor's performance of the Work. Contractor warrants, represents, covenants, and agrees to the best of its knowledge that there are no obligations, commitments, conflicts of interest, or impediments of any kind that will limit or prevent performance of the Work. Contractor does not have a conflict of interest related to this Agreement or the performance of the Work under the rules of the Institute of Internal Audit ("IIA") Standards for the Professional Practice of Internal Auditing, including without limitation, Section 400 Performance of Audit Work.
- b. Contractor warrants, represents, covenants, and agrees that all of the Work to be performed by Contractor under or pursuant to this Agreement shall be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project.
- c. Contractor warrants, represents, covenants, and agrees that the Work will be accurate and free from any material errors. The Contractor's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the University nor shall the Contractor be released from any liability by reason of such approval by the University, it being understood that the University at all times is ultimately relying upon the Contractor's skill and knowledge in performing the Work.
- d. The Contractor warrants, represents, covenants, and agrees that all persons connected with the Contractor directly in charge of the Work are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations. In addition, Contractor warrants, represents, covenants, and agrees that all persons connected with the Contractor performing the Work shall be generally familiar with the requirements of the *Texas Internal Auditing Act, Standards for the Professional Practice of Internal Auditing* and all other applicable requirements.
- e. The Contractor warrants, represents, covenants, and agrees to call to University's attention anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the

Contractor (by the University or any other party) which it regards in its opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such document or data is furnished. Nothing shall excuse or detract from the Contractor's responsibilities or obligations hereunder in a case where such document or data is furnished unless the Contractor advises University in writing that in its opinion such document or data and any requests made therein for action are unsuitable, improper, or inaccurate and University confirms in writing that it wishes the Contractor to proceed in accordance with the data as originally given.

- f. The Contractor warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform the Work in the best way and in the most expeditious and economical manner consistent with the interests of University.
- g. The Contractor warrants, represents, covenants, and agrees that it shall, at its own cost, make good any defects in the Work as soon as the Contractor becomes aware of such defects or is notified of such defects. Should the Contractor refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then the University shall be entitled to make good such defective Work at the expense of the Contractor. This commitment by Contractor is in addition to, and not in substitution for, any other remedy for defective Work which the University may have at law or in equity.
- h. Contractor warrants, represents, covenants and agrees that (i) it is a limited liability partnership, or corporation (ii) it has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and (iii) the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- i. Neither the execution and delivery of this Agreement by Contractor nor the performance of its obligation hereunder will result in the violation of any provision of any corporation, partnership agreement by which Contractor is bound, or any agreement by which Contractor is bound or to the best of Contractor's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Contractor.
- j. Except for the obligation of University to pay Contractor certain fees and expenses pursuant to the terms of this Agreement and the obligation to indemnify Contractor under Section 9 hereof, University shall have no 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 University to Contractor, no present or future partner or affiliate of University or any agent, officer, director, employee, or regent of University, The University of North Texas System, or of the components comprising the University of North Texas System, or anyone claiming under University has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

5. The Contract Sum

- a. The University shall pay Contractor in current funds for the performance of the Work, subject to adjustments, additional services and reimbursable expenses, if any, as set forth in **Exhibit C** attached and incorporated for all purposes.
- b. The Contract Sum (defined by **Exhibit C**) includes any applicable federal, state or local sales or use tax payable on this transaction.

6. Payment Terms

- a. Contractor shall submit to University an application for payment (each a “Progress Payment”) covering the Work performed for University to that date in accordance with **Exhibit C**, which application shall be accompanied by statements, invoices, and other evidence that University may reasonably require to support the amount requested to be submitted. University will, within thirty (30) days from the date it receives such application and supporting documentation for payment, approve or disapprove the amount reflected in such application and if University approves such amount or any portion of such amount, it shall promptly pay to Contractor the amount so approved; provided, that, Contractor has performed such Work in accordance with the terms of this Agreement. If University disapproves any amount requested by Contractor, University shall give Contractor specific reasons for its disapproval in writing.
- b. The cumulative amount of all Progress Payments and the Final Payment (defined below) shall not exceed the Contract Sum set forth in **Exhibit C**.
- c. Within ten (10) days after final completion of the Work and acceptance thereof by University or as soon thereafter as practicable, Contractor shall submit a final request (“Final Request”) which shall set forth all amounts due and remaining unpaid to Contractor and upon approval thereof by University, University shall pay (“Final Payment”) to Contractor the amount due under such Final Request.
- d. Any provision hereof to the contrary notwithstanding, University shall not be obligated to make any payment (whether a Progress Payment or Final Payment) to Contractor hereunder if any one or more of the following conditions precedent exist:
 - (1) Contractor is in breach or default under this Agreement;
 - (2) Any part of such payment is attributable to Work which is not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with this Agreement;
 - (3) Contractor has failed to make payments promptly to its contractors or subcontractors or other third parties used in connection with the Work for which University has made payment to Contractor; or

- (4) If University, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Work in accordance with this Agreement, no additional payments will be due Contractor hereunder unless and until Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the compensation then remaining unpaid is determined by University to be sufficient to so complete the Work.
- e. No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the Work to which such partial payment relates or relieve Contractor of any of its obligations hereunder with respect thereto.
- f. Contractor shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the Work.
- g. The acceptance of Final Payment shall constitute a waiver of all claims (except with respect to obligations that survive the termination or expiration of this Agreement) by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Final Request for payment.
- h. University shall have the right to verify the details set forth in Contractor's billings, certificates, and statements, either before or after payment therefore, by (1) inspecting the books and records of Contractor at mutually convenient times; (2) examining any reports with respect to this Project; (3) interviewing Contractor's business employees; (4) visiting any place where performance of all or a portion of the Project occurs; and (5) other reasonable action.

7. Ownership and Use of Documents

- a. All working papers, computations, data, publications, reports, studies, plans, models, drawings, specifications, and other materials prepared by or for the Contractor in connection with the Work, this Agreement or the services provided hereunder (collectively "Work Material"), are the property of the University and for its exclusive use and re-use at any time without further compensation and without any restrictions; provided, however, the Contractor shall be entitled to retain copies of such Work Material as required by law, regulation, professional standards or reasonable business practice.
- b. Except for such Work Material which is intended to be made public as part of the Project, Contractor shall treat all such Work Material as confidential, and Contractor shall neither use any such Work Material or copies thereof on other work nor disclose such material or information to any other party without University's prior written approval, except to the extent that disclosure is required by law, regulation, subpoena or other administrative or legal process or by applicable regulatory or professional

standards. To the extent permitted by law and physically possible, Contractor will notify the University at least five (5) days prior to disclosure.

8. Default and Termination

- a. In the event of substantial failure by a party hereunder to perform in accordance with the terms hereof, the other party may terminate this Agreement upon fifteen (15) days' written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the terminating party.
- b. University may, without cause, terminate this Agreement at any time upon giving fifteen (15) days' advance notice to the Contractor. Upon termination pursuant to this Section, the Contractor shall be entitled to payment of such amount as shall compensate Contractor for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement, provided the Contractor shall have delivered to University such statements, accounts, reports and other materials as required by Section 8.d. below, and provided that Contractor shall have delivered to University all reports, documents and other materials prepared by Contractor for delivery hereunder prior to termination. University shall not be required to reimburse Contractor for any services performed or expenses incurred after the date of the termination notice.
- c. A termination under Sections 8.a. and 8.b. above shall not relieve the Contractor or any of its employees of liability for violations of this Agreement or any other act or omission of the Contractor and the provisions of Sections 6.h., 7, 9, 13.j., and 13.m. shall survive the termination of this Agreement. In the event of a termination under Sections 8.a. and 8.b. above, Contractor hereby consents to employment by University of a substitute Contractor to complete the Work under this Agreement, with the substitute Contractor having all rights and privileges of the original Contractor of the Project.
- d. As of the date of termination of this Agreement, the Contractor shall furnish to the University all Work Material required under this Agreement or prepared by the Contractor in connection with the Work, this Agreement or the services provided hereunder. University shall have the right to use the Work Material for the completion of the Work or otherwise. In the event of termination of this Agreement or upon completion of the Work, University may, at all times, retain the originals of all Work Material. All Work Material is the property of University as described in Section 13.j. hereof. The Work Material is not to be used by any person other than University on other projects unless expressly authorized by University in writing.
- e. If Contractor fails to cure any default hereunder within fifteen (15) days after receiving written notice of such default, University shall be entitled (but shall not be obligated) to cure any such default and shall have the right to offset against all amounts due to

Contractor hereunder, any and all reasonable expenses incurred in connection with such curative actions.

9. Indemnification

- a. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACTOR (FOR ITSELF AND FOR ITS AGENTS, PARTNERS, NOT INCLUDING PARTNERS OF JIM VITALE & ASSOCIATES, INC., INDIVIDUALLY, EMPLOYEES, AND CONTRACTORS) (COLLECTIVELY "INDEMNITORS") SHALL AND DO AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, SUBJECT TO THE CONSTITUTIONAL AND STATUTORY ROLE OF THE TEXAS ATTORNEY GENERAL SUCH APPROVAL SHALL NOT BE REASONABLY WITHHELD, AND HOLD HARMLESS THE UNIVERSITY AND THE UNIVERSITY OF NORTH TEXAS SYSTEM, ITS AFFILIATED ENTERPRISES, REPRESENTATIVES OF THE UNIVERSITY, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, REGENTS, PARTNERS, EMPLOYEES AND AGENTS (COLLECTIVELY "INDEMNITIES") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION (COLLECTIVELY "LIABILITIES") OF ANY PERSON OR ENTITY WHOMSOEVER TO THE EXTENT ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THE WORK OR ANY PART THEREOF WHICH ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE EVEN IF IT IS CAUSED IN PART BY THE NEGLIGENCE OR OMISSION OF ANY INDEMNITEE, SO LONG AS IT IS NOT CAUSED BY THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE. IN THE EVENT MORE THAN ONE OF THE INDEMNITORS ARE CONNECTED WITH AN ACCIDENT OR OCCURRENCE COVERED BY THIS INDEMNIFICATION, THEN EACH OF SUCH INDEMNITORS SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE TO THE INDEMNITEES FOR INDEMNIFICATION AND THE ULTIMATE RESPONSIBILITY AMONG SUCH INDEMNITORS FOR THE LOSS AND EXPENSE OF ANY SUCH INDEMNIFICATION SHALL BE SETTLED BY SEPARATE PROCEEDINGS AND WITHOUT JEOPARDY TO ANY INDEMNITEE. THE PROVISIONS OF THIS ARTICLE SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH UNIVERSITY OR ANY OF THE INDEMNITEES HAS BY LAW.
- b. CONTRACTOR SHALL PROTECT AND INDEMNIFY THE UNIVERSITY FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, OR COPYRIGHT, ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY CONTRACTOR, OR BY UNIVERSITY AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL, PROVIDED THAT UPON BECOMING AWARE OF A SUIT OR

THREAT OF SUIT FOR PATENT OR COPYRIGHT INFRINGEMENT, UNIVERSITY SHALL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONTRACTOR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF UNIVERSITY'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. CONTRACTOR DOES NOT WARRANT AGAINST INFRINGEMENT ARISING FROM (I) THE UNIVERSITY'S MODIFICATION OF CONTRACTOR'S WORK PRODUCT, (II) THE FAILURE OF THE UNIVERSITY TO USE ANY CORRECTIONS OR MODIFICATIONS MADE AVAILABLE BY CONTRACTOR, (III) INFORMATION, MATERIALS OR INSTRUCTIONS PROVIDED BY OR ON BEHALF OF THE UNIVERSITY, OR (IV) THE UNIVERSITY'S DISTRIBUTION, MARKETING, OR USE FOR THE BENEFIT OF THIRD PARTIES OF CONTRACTOR'S WORK PRODUCT. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO COOPERATE REASONABLY WITH CONTRACTOR AND PARTIES SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

- c. TO THE EXTENT PERMITTED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS, THE UNIVERSITY SHALL INDEMNIFY AND HOLD HARMLESS CONTRACTOR AND ITS PERSONNEL FROM ALL CLAIMS, LIABILITIES, AND EXPENSES RELATING TO THIS AGREEMENT, EXCEPT TO THE EXTENT FINALLY JUDICIALLY DETERMINED TO HAVE RESULTED FROM THE BAD FAITH OR INTENTIONAL MISCONDUCT OF CONTRACTOR.
- d. The foregoing indemnity obligations are conditioned on the indemnified party providing the indemnifying party with prompt notice of any claim for which indemnification shall be sought and cooperating in all reasonable respects with the indemnifying party in connection with any such claim. The indemnifying party shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing, subject to the Constitutional and statutory role of the Texas Attorney General.
- e. The indemnification provisions set forth in this Section 9 shall apply to the fullest extent of the law whether in contract, statute, tort (such as negligence), or otherwise and shall survive the termination of this Agreement.

10. Limitation on Liability

University agrees that Contractor shall not be liable to University for any claims, liabilities, or expenses relating to this Agreement for an aggregate amount in excess of the fees paid by University to Contractor pursuant to this Agreement, except to the extent finally judicially determined to have resulted from the bad faith or intentional misconduct of Contractor. In no event shall Contractor or its personnel be liable for consequential, special, indirect, incidental,

punitive or exemplary loss, damage, or expense relating to this Agreement. The limitations on liability set forth in this Section shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise and shall survive the termination or expiration of this Agreement and shall be subject to the Constitutional and statutory role of the Texas Attorney General.

11. Independent Contractor

Contractor recognizes that it is engaged as an independent contractor and acknowledges that University will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Contractor, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of University by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of University, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits. Contractor hereby agrees to make its own arrangements for any of such benefits as it may desire and agrees that it is responsible for all income taxes required by applicable law.

12. Insurance

- a. Contractor, consistent with its status as an independent contractor, shall carry at least the following insurance in such form, with such companies and in such amounts (unless otherwise specified) as University may require:
 - (1) Worker's Compensation and Employer's Liability insurance, including All States Endorsement, to the extent required by federal law and complying with the laws of the State of Texas, and to the extent necessary to protect University against workers' compensation claims;
 - (2) Commercial General Liability insurance for at least One Million Dollars (\$1,000,000), Combined Single Limit Bodily Injury and Property Damage on an occurrence basis; and
 - (3) Comprehensive Automobile Liability insurance covering all owned, non-owned or hired automobiles to be used by Contractor, with coverage for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage.
- b. Contractor shall deliver to University such certificates of insurance if requested.
- c. The insurance policies required in this Agreement shall be kept in force for the periods specified below:

- (1) Commercial General Liability Insurance shall be kept in force until receipt of final payment by the Contractor;
- (2) Workers' Compensation Insurance shall be kept in force until the Work has been fully performed and accepted by University.

13. Miscellaneous

- a. Assignment. This Agreement is a personal service contract for the services of Contractor, and Contractor's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned, subcontracted, or delegated to a third party without prior written consent of the other party. The benefits and burdens of this Agreement are, however, assignable by University.
- b. Family Code Child Support Certification. By signing this Agreement, the undersigned certifies as follows: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- c. Force Majeure. The Contractor shall not be liable for any failures or delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, acts or omissions or the failure to cooperate by the University or any of its officers, directors, employees or personnel, acts or omissions or the failure to cooperate by any third party, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority. Provided, however, Contractor shall be liable and responsible to University for all loss and damage suffered by University for any and all delays in performance of or failures to perform Contractor's duties and obligations under the terms of this Agreement which are directly or indirectly related to Contractor's failure to be Year 2000 compliant.
- d. Sales Tax Certification. By signing this Agreement, the undersigned certifies as follows: "Under Section 2155.004, *Texas Government Code*, the Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
- e. Loss of Funding. Performance by University 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 The University of North Texas System (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University shall issue written notice to Contractor and University may terminate this Agreement without

further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

- f. Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Contractor and University and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by University and Contractor.
- g. Captions. The captions of sections and subsections in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.
- h. Governing Law. This 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.

(1) To the extent that Chapter 2260 of the *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 law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor:

(A) 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 shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by subchapter B of Chapter 2260, to University in accordance with the notice provisions in this Agreement. Contractor’s notice shall 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 University 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 required prerequisite to Contractor’s filing of a contested case proceeding under subchapter C of Chapter 2260. The Vice President for Research and Biotechnology Admin. of University, or such other officer of University as may be designated from time to time by University by written notice thereof to negotiate with Contractor in an effort to resolve such claims.

(B) If the parties are unable to resolve their disputes under subparagraph (A) of this section, 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 University.

(C) 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 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this

Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.

(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, hereafter enacted or subsequently amended.

(3) 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, in whole or in part. University and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this section.

- i. **Waivers.** No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

- j. **Proprietary Interests.** Subject to Section 7, Contractor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type relating to its activities hereunder, whether or not any of the same is accepted or rejected by University, shall remain the property of University and shall not be used or published by Contractor or any other party without the express prior consent of University. In implementation of the foregoing, Contractor hereby grants and assigns to University all rights and claims of whatever nature and whether now or hereafter arising in and to any and all of such reports, studies, plans, models, drawings, specifications, and other information or data and shall cooperate fully with University in any steps University may take to obtain copyrights, trademark or like protections with respect thereto. All information owned, possessed or used by University which is communicated to, learned, developed or otherwise acquired by Contractor in the performance of services for the University, which is not generally known to the public, or previously known by Contractor, shall be confidential and Contractor shall not, beginning on the date of first association or communication between University and Contractor and continuing through the term of this Agreement and any time thereafter, disclose, communicate or divulge, or permit disclosure, communication or divulgence, to another or use for Contractor's own benefit or the benefit of another, any such confidential information, unless required by law, regulation, subpoena or other administrative or legal process or by applicable regulatory or professional standards. Contractor shall carry out its nondisclosure obligations hereunder using the same degree of care that it uses in protecting its own proprietary information, but at least a reasonable degree of care. Except when defined as part of the Work, Contractor shall not make any press releases, public statements, or advertisement referring to the Project or the engagement of Contractor as an independent contractor of University in connection with the Project, or release any information relative to the Project for publications, advertisement or any

other purpose without the prior written approval of University. University hereby gives its approval to the use of its name by Contractor as part of a general client list. Contractor shall obtain assurances similar to those contained in this Section from persons, contractors, and subcontractors retained by Contractor. Contractor acknowledges and agrees that a breach by Contractor of the provisions hereof will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that University shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement.

- k. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.
- l. Appointment. University hereby expressly reserves the right from time to time to designate by notice to Contractor a representative to act partially or wholly for University in connection with the performance of University's obligations hereunder. Contractor shall act only upon instructions from such representative unless otherwise specifically notified to the contrary.
- m. Records. Records of Contractor's costs, reimbursable expenses pertaining to the Project and payments shall be available to University or its authorized representative during business hours and shall be retained for three years after Final Payment or abandonment of the Project, unless University otherwise instructs Contractor in writing.
- n. Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given or served when delivered by hand delivery or when deposited in the U.S. mail by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to University: Vice President for Research
University of North Texas Health Science Center
3500 Camp Bowie Blvd, CBH-144 Fort Worth, TX 76107-2699

with a copy to: Compliance Officer
University of North Texas Health Science Center
3500 Camp Bowie Blvd, CBH-144 Fort Worth, TX 76107-2699

If to Contractor: Jim Vitale
Jim Vitale & Associates
P.O. Box 550
Johnstown, Colorado 80534

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

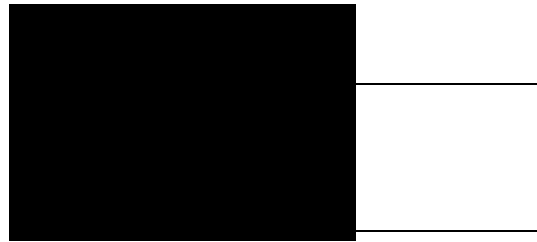
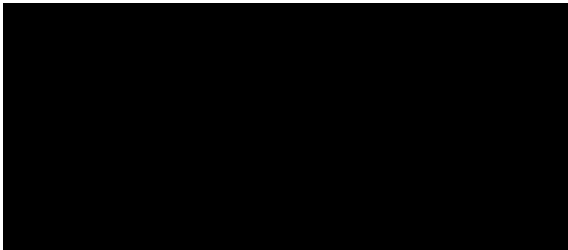
- o. Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

- p. Enforcement. It is acknowledged and agreed that Contractor's services to University are unique, which gives Contractor a peculiar value to University and for the loss of which University cannot be reasonably or adequately compensated in damages; accordingly, Contractor acknowledges and agrees that a breach by Contractor of the provisions hereof will cause University irreparable injury and damage. Contractor, therefore, expressly agrees that University shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if University is not in breach of this Agreement.

IN WITNESS WHEREOF, University and Contractor have executed and delivered this Agreement as a sealed instrument as of the date first above written.

THE UNIVERSITY OF NORTH
TEXAS HEALTH SCIENCE CENTER

JIM VITALE & ASSOCIATES, INC.



HSC Contract #2022-0036

EXHIBIT A - UNTHSC F&A Accounting Support

SCOPE OF WORK

Activity I – 2 CFR Part 220 (codifying OMB A-21) Compliant Survey of UNTHSC Space Usage

1. Quality assessment of space data accumulation and documentation methodology for compliance with Appendix A to 2 CFR Part 220, sections E.2.d. and F.
 - a. Provide copies of space survey specific documents and UNTHSC, specific, space functional usage definitions to University project management personnel and research department personnel participating in the surveys.
2. Document data gathering and workpaper techniques supporting the Space Usage System. Special focus on joint-use and research space.
3. Incorporate salary information into documentation of organized research space.
4. Conduct room by room survey of University departments with organized research.
 - a. The University will provide a conference/office space for interviews and setup appointments for in-person space surveys with responsible departmental officials.
 - b. If conditions warrant, with the start of the interviews in November 2021, the Contractor with UNTHSC's assistance will conduct virtual interviews. Following up, as needed, to cover all appropriate rooms. Forwarding hard copy documents to responsible department officials for signature.
5. Block assignment of departmental space in non-organized research.
6. Verify reconciliation of usage survey to campus room inventory.
7. Finalize campus research space statistics and federally compliant space documentation

Deliverable: Space Usage System updated to minimize Federal F&A reviewer audit findings.

Activity II -Federal Costing Principles Compliance Review of University's Financial Account and Transaction Coding Methodology

1. Conduct a financial analysis of account structure and transactional identification program to assess institution compliance with Appendix A to 2 CFR Part 220, sections F, G and J.
2. Effort Reporting Compliance and Accuracy
 - a. Review time and effort reporting policies and procedures
 - b. Conduct sample verification of time and effort reporting
3. Review pool by pool screening of accounts after yearend.

Deliverable: Validate the outcome of the University's system of account grouping to minimize Federal F&A reviewer audit findings. Minimize research administrative coding inconsistencies. Determine level of effort reporting reliability. Review UNTHSC detailed account level screening and scrubbing of proposal.

Activity III - Prepare UNTHSC's Facilities & Administrative Cost Report as required by the Federal Costing Principles

1. Develop specialized detailed accounting workpapers for documentation of department administration allocation and assess the benefit of a direct charge equivalent (DCA) methodology.
2. Review specialized report formats prepared in compliance with 2 CFR Part 220 - Appendix A's Standard Format Cost Report.
 - a. Reconcile financial reports to UNTHSC financial statements.
 - b. Review final yearend financial summaries for completeness.
 - c. Reconcile summaries to the yearend financial statements.
 - d. Update account screening of all direct bases (organized research, instruction, etc.) with reconciliation to space survey data. Document changes.
 - e. Prepare schedules for non-financial statement cost (building and equipment depreciation/use allowance, interest expense and UNT System cost).
 - f. Review high vulnerability accounts (President's office and others) for unallowables.
 - g. Accumulate and schedule cost sharing and National Institutes of Health salary cap data.
 - h. Develop schedule of Department Administration expenses
 - i. Identify sub-pool opportunities in General Administration and Operation and Maintenance (such as, environmental health) pools.
 - j. Accumulate library expenditures and default statistics.
 - k. Assess alternative costing methodology for library pool allocation.
 - l. Develop Final Proposal and Conduct Quality Review
 - i. Finalize all proposal pools and allocation statistics.
 - ii. Accumulate the results of the pools, cost allocate to appropriate pools and bases.
 - iii. Calculate rates for organized research (on and off-campus), other sponsored activities (on and off-campus) and instruction.
 - iv. Present calculated rates to UNTHSC management to discuss initial strategy.
 - v. Prepare proposal sections narratives to facilitate review.
 - vi. Make final changes to proposal based on review by UNTHSC management.
 - vii. Finalize proposal package including Appendix A certifications and required letters for depreciation and unallowables; and
 - viii. Submit package to Cost Allocation Services-Dallas.

Deliverable: FY2022 F&A Cost Rate Report in compliance with 2 CFR Part 220.

Activity IV - Provide Audit Resolution and Negotiation Services to UNTHSC in support of the Federal review of the FY2022 F&A Cost Report

1. Provide audit liaison and cost rate negotiation support to the University.
2. Answer negotiator questions and defend Cost Report throughout mandatory site visit by Federal representatives.

Deliverable: New Federally approved F&A rates starting FY2024.

EXHIBIT B - UNTHSC F&A Accounting Support

SCHEDULE OF ACCOMPLISHMENTS

Activity I – 2 CFR Part 220 Compliant Survey of UNTHSC Space Usage

All objectives included in this activity will be completed by November 2022

- November-December 2021 – outline space, grant and payroll requirements
- December 2021-April 2022 – University scheduling interviews with key department personnel
- January-May 2022 – conduct Department space utilization interviews
- June 2022 – Quality control review of space survey and identify vacant space for fall survey
- September-October 2022 – follow-up survey of any previously identified vacant space
- October-November 2022 – Finalize space survey statistics and survey documentation

Activity II -Federal Costing Principles Compliance Review of University’s Financial Account and Transaction Coding Methodology

Objectives 1 and 2 will be completed by August 2022

- January/February 2022 – outline preliminary financial requirements
- April - June 2022 – financial compliance and effort reporting review/analysis

Objective 3 will be completed between September 2022 and December 2022

Activity III - Prepare UNTHSC’s F&A Cost Report as required by the Federal Costing Principles

All F&A Cost Report development objectives will be completed between October 2022 and February 2023

Activity IV - Provide Audit Resolution and Negotiation Services to UNTHSC in support of the Federal review of the FY2022 F&A Cost Report

All objectives will be completed between March 2023 and December 2023 (timetable is an estimate based on current Federal review policy)

EXHIBIT C - UNTHSC F&A Accounting Support

COST OF SERVICES

FEES AND EXPENSES: The cost accounting support to be provided to UNTHSC as part of the FY2022 Facilities and Administrative Cost Rate proposal (Cost Report) process starting November 1, 2021 and completing approximately December 31, 2023 (estimated end date is based on Federal negotiator's proposal review timing).

Contractor shall be reimbursed without mark-up for reasonable expenses, including meals, lodging, mileage and coach class airfare, validly incurred directly and solely in support of the Project. Per UNTHSC's request, all allowable expenses for travel and subsistence will be covered by a fully burdened fee. The University has requested a Full Fee contract that covers professional services and expenses.

JVA professional fees and expenses for this project will be incurred over two consecutive fiscal years:

- FY2022 - \$72,000
- FY2023 - \$43,200

As in past support agreements, Contractor will bill for services in the following manner:

1. FY2022-FY2023 monthly billing
 - a. Professional fees/expenses for this project will be billed monthly in equal installments of \$7,200 commencing November 15, 2021 for sixteen months
2. At the actual completion of FY2022 F&A proposal preparation, submission, Federal review and rate negotiations (estimated as no later than December 2023), a fee of \$9,800 will be due. The timing of rate negotiations is driven by Federal reviewer's timelines, so final resolution may exceed estimates.
3. Full project cost for period November 2021 through final FY2023 rate negotiations is \$125,000.

Declaration of Procurement Method

The attached contract document has been issued as a result of either a sole source or proprietary justification approved by the University of North Texas System Procurement Department.

The approved justification form is on file with the UNT System Procurement Department records.