

FOSS' GLOBAL TERMS AND CONDITIONS FOR SALE OF PRODUCTS AND SERVICES

1	APPLICATION AND VALIDITY		SmartCare™, training and any agreed ad-hoc services carried out by FOSS.
1.1	These terms and conditions (the “Terms”), together with the specific Order and any document referenced to herein, constitute an agreement (the “Agreement”) between the invoicing FOSS company (“FOSS”) and the customer submitting the Order (“You” or “Your”) when the Order has been confirmed by FOSS. FOSS and You are each a “Party” to the Agreement.		“Service Specification” means the specification for the Service(s) set out in the applicable preventive maintenance agreement or in the Order. “Specifications” means the Product Specification and Service Specification.
1.2	These Terms apply to any purchase of Products and Services as defined below.	1.4	Separation of terms - Software Services These Terms do not apply to the supply or licensing of FOSS' Software Services, which is regulated in the FOSS Global Terms and Conditions for Software Services (available at Legal (fossanalytics.com)) or leasing or lending arrangements of FOSS products, which must be agreed subject to separate terms.
1.3	Definitions. In addition to the definitions above, the following definitions apply to these Terms: "Analytics Package/Model" means a collection of pre-configured mathematical models that are targeted a specific set of application and set of products. "Customer Data" means data (i) inputted by You or on Your behalf into the Products, (ii) instrument outputs, including, but not limited to, analytical results, spectral and image data and (iii) any associated sample metadata, including, but not limited to, associated calibration reference data. "Delivery" means (i) for Process Instruments the date of acceptance as described in clause 6.3, however no later than 1 year from date of shipment, (ii) for all other Products the delivery date according to the agreed Incoterms 2020, cf. also clause 3.4 and (iii) for Services the final invoice date. "Instrument Software" means any software embedded in or installed on the Products. "Order" means Your order for the supply of Products and/or Services, as set out in a purchase order form, or Your written acceptance of FOSS' quotation. "Process Instrument" means FOSS instruments that can be connected directly to a processing line and allow continuous process control. The analysis can be inline, where the instrument interface is placed in the process stream, or online where automatic sampling from the process stream takes place. The following product lines are considered as Process Instruments (non-exhaustive list): MeatMaster™, ProFoss™, ProceScan™, and MilkoStream™ product lines. "Product" means a FOSS instrument, including licensing of Instrument Software, Reagents & Consumable and/or spare parts as set out at in the Product Specification. "Product Specification" means the specification for the Product set out at the FOSS website together with the relevant FOSS Analytics Packages/Models and/or Application Note(s) or in the Order. "Reagents & Consumable(s)" means (i) reagents and (ii) any items that are intended for one-time use, or which deplete over time with regular use. "Recurring Service(s)" means any recurring/subscription-based Services. "Service(s)" means FOSS' preventive maintenance, including Recurring Services such as FOSS Care™ and	1.5	Interpretation in case of inconsistency. In the event of any conflict or inconsistency between the provisions of the Terms, the Order, and any other documents or agreements referenced herein, the following order of precedence shall apply: (i) the Order, (ii) the Terms, (iii) any other document or agreement referenced herein. The provisions of the document with the highest priority shall prevail and govern.
		1.6	By any purchase of Products or Services you agree to the Terms unless otherwise agreed in writing.
		1.7	The Order constitutes an offer by You to purchase Product and/or Services in accordance with these Terms. The Order shall only be deemed to be accepted when FOSS issues a written acceptance of the Order at which point and date the Agreement shall come into existence. No quotation given by FOSS shall constitute a binding offer and may be cancelled at any time until FOSS issues a written acceptance.
		2	PRICE AND PAYMENT
		2.1	Prices. You shall pay the prices set out in the relevant Order for the Products and/or Services. Unless otherwise stated in the FOSS quotation, the price for Service is exclusive of travel and accommodation costs, and the price for Service is per instrument.
		2.2	Administrative fee. FOSS will apply an administrative fee to Your Order, cf. the quotation, except for online orders placed by You on the FOSS webshop.
		2.3	Down payment. FOSS may require down payment before delivery of Products and Services.
		2.4	Invoicing. Unless otherwise agreed in an Order, FOSS will invoice as follows: (a) Products will be invoiced upon Delivery at the agreed time; (b) Services (other than Recurring Services) will be invoiced upon delivery at the agreed time; and (c) Recurring Services will be invoiced in advance from the start date of the subscription period and thereafter with the frequency set out in the Order. Adjustment of prices. Unless otherwise specifically set out in the Order, FOSS may adjust the prices for Products and Services upon written notice.
		2.5	Interest in case of late payment. If You fail to make any payment by the due date for payment, then You shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest will accrue at the maximum rate allowed under applicable law.
		2.6	Suspension. If You fail to make any payment by the due date, FOSS may, at its discretion, suspend and/or discontinue provision of the

Products and Services irrespective of whether such Products or Services are ordered under the same Order as the payment relates to or not.

quotation or order confirmation or set out in the Product Specification or Service Specification, as applicable.

2.7 **Payment terms.** You shall pay all applicable fees for the Products and Services according to the payment terms stated in the Order.

3 DELIVERY OF PRODUCTS

3.1 **Delivery dates.** Unless otherwise specified in an Order, FOSS will notify You about the delivery date(s) upon confirmation of the Order.

3.2 **Time is not of the essence.** FOSS shall use its reasonable endeavours to deliver the Products on the delivery date or dates, but any such dates are approximate only and may be subject to change. The time of delivery is not of the essence.

3.3 **Packaging.** FOSS will package the Products to withstand normal wear and tear during shipping and handling.

3.4 **Delivery.** FOB at Prairie View A&M.

Delivery by instalments. FOSS may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in Delivery or defect in an instalment shall not entitle You to cancel any other instalment.

ACCEPTANCE

3.5 **Inspection and acceptance.** You shall conduct a thorough inspection of the Product upon Delivery and notify FOSS of any defects within five (5) calendar days after Delivery. If You have not notified FOSS of any defect within the foregoing timeframe, the Products are deemed accepted by You and You may not make any claims related to defects in the Product that You became or should have been become aware of after conducting a thorough inspection. If installation services have been agreed for one or more Products, the foregoing shall not apply to such Products and the acceptance procedure under clause 6.3 (Process Instruments commissioning – specific terms) shall apply instead.

SPECIFICATION OF PRODUCTS AND SERVICES

Specifications. The Products are described in the Product Specifications and Services are described in the Service Specifications.

5

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5.2 **Amendment of the Specifications.** FOSS reserves the right to amend the Specifications if required by any applicable statutory or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Product or Service.

5.3 **Other information not included in the Specifications.** Any information, including, but not limited to information on selection of Product and Services, its application or use, performance, product design, weight, dimensions, capacity or any other technical data in catalogue descriptions, advertisements, etc. and whether made available in writing, orally, electronically, online or via download, shall be considered informative, and is only binding if and to the extent, explicit reference is made in a

6 PROCESS INSTRUMENTS COMMISSIONING – SPECIFIC TERMS

6.1 **Installation.** If installation Services, as part of commissioning, are agreed in an Order for a Process Instrument, FOSS shall:

- (a) verify that all parts of the Process Instrument are received with all required parts in proper condition;
- (b) verify that the installation location is environmentally and technically suitable. You are responsible for ensuring that the location is ready and suitable for installation purposes;
- (c) install and configure the Process Instrument at the prepared site;
- (d) test that the Process Instrument is working according to Specifications;
- (e) provide basic training to the users assigned by You to operate the Process Instrument; and
- (f) provide basic training to the users assigned by You to maintain the Process Instrument and perform routine surveillance.

6.2 **Latest installation date.** In accordance with clause 6.5 below, You must facilitate that installation can take place at the time agreed by the Parties, but no later than sixty (60) days after Delivery. If installation Services are not performed within such period, completion of installation Services shall be deemed delivered and accepted by You at the time of Delivery, and FOSS will no longer be required to provide any further installation Services. If FOSS agrees to deliver installation later than sixty (60) days after Delivery, the installation date for the purpose of the warranty period set out in clause 11.4 shall still be on the date of Delivery.

6.3 **Acceptance after installation.** Upon completion of the installation, You must inspect and test the Process Instrument and notify FOSS of any defects within seven (7) calendar days after completion of the installation. If You have not notified FOSS of any defect within the foregoing timeframe or if You have signed the Installation Qualification (IQ) and Operation Qualification (OQ), the installation and the Process Instrument are deemed accepted by You and You may not make any claims related to defects in the Process Instrument that You became or should have been become aware of after conducting a thorough inspection and test.

6.4 **Delivery date is not installation date.** For the avoidance of doubt, the Process Instrument will not be deemed delivered on the installation date. Delivery of the Process Instrument will be deemed to have taken place in accordance with clause 6.3.

6.5 **Preparation of the site.** Prior to FOSS performing installation Services, You are responsible (at Your own cost) for ensuring that the relevant site where the Process Instrument is to be installed complies with FOSS Site Preparation Checklist/Pre-Sales Checklist provided with the Order and such other instructions notified by FOSS to You. You are also responsible for providing all necessary access and facilities reasonably required to install the Process Instrument.

6.6 **Cost of delayed installation.** If FOSS is prevented from carrying out installation on the specified date, e.g. because no site preparation has taken place, the site is not suitable, or You have otherwise not complied with Your obligations, FOSS may charge a reasonable additional amount to cover for FOSS' personnel idle time and expenses incurred.

6.7 **Additional Services.** As part of commissioning, You and FOSS may agree in an Order to Services that are additional to those outlined in clause 6.1. Such Services may consist of system integration of the Process Instrument into Your network and/or update and verification of FOSS' Analytics Package/Model to fit Your specific needs or processes. For the avoidance of doubt, delivery of such additional Services does not affect the warranty starting date or the invoice of the Process Instrument.

6.8 **Integration deliverables from third parties.** FOSS offers no warranties, maintenance, replacement or repair works in respect of any integration deliverables from third parties, e.g. computers, software, hardware, components or services not originating from or made by FOSS itself.

7 TITLE TO PRODUCTS

7.1 **Title.** Ownership and title to Products (except for Instrument Software) shall not pass to You until FOSS receives payment in full for the Products.

8 LICENSE TO INSTRUMENT SOFTWARE

8.1 **License to Instrument Software.** Instrument Software is licensed not sold. You are granted a license to install and use one (1) copy of the Instrument Software per FOSS Product. In addition, You may make one (1) archival copy of the Instrument Software which may only be used for

	the reinstallation of the Instrument Software. Multiple use or installation is only allowed if You obtain an appropriate license agreement for each user and each copy of the Instrument Software.		are used in compliance with any laws, rules and regulations applicable to Your specific use.
8.2	You may not use Instrument Software on other equipment. You may not use the Instrument Software on any equipment other than the Product it has been installed on, and shall not remove, adapt or otherwise tamper with any copyright notice, legend, or logo.	10.2	You agree to inform FOSS if a Product is relocated to another site.
8.3	Restrictions. You may not (i) copy, use, distribute, republish, download, display, transmit, sell, rent, lease, host, or sub-license the Instrument Software, save as permitted under this Agreement; (ii) use the Instrument Software in the operation of a service bureau, outsourcing, time-sharing service or other non-internal business purpose; (iii) modify, create derivative works of, adapt, translate, reverse engineer, decompile, or otherwise attempt to discover the source code or other technology forming part of the Instrument Software; (iv) alter any files or libraries in any portion of the Instrument Software; (v) use the database portion of the Instrument Software in connection with any software other than the Instrument Software; (vi) reproduce the database portion or create any tables or reports relating to the database portion unless specifically agreed in writing with FOSS; (vii) remove any brand names, trademarks or logos of FOSS shown on the Instrument Software; or (viii) use the Instrument Software other than as intended and set out in the Product Specification.	10.3	You shall: (a) cooperate with FOSS in all matters relating to the Products and Services. (b) prepare the site prior to installation as set out in clauses 6.5-6.6. (c) provide to FOSS and its representatives access to Your premises and other facilities as reasonably required for the delivery of Products and Services; (d) provide adequate lighting, heating, power, ventilation and draining as per FOSS' reasonable requirements; (e) inform FOSS' engineer or representatives on each visit about any unsatisfactory running or irregular performance of the Product on which FOSS will perform Services; (f) provide FOSS with such documents, information, tools and materials required by FOSS for the proper installation and provision of Products and Services and ensure, that such material is accurate in all material respects; (g) ensure that all materials are in good working order and suitable for the purposes for which they are used in relation to FOSS Products and Services; (h) prepare and maintain the relevant premises for the supply of FOSS Products and Services, including identifying, monitoring, removing and disposing of any hazardous materials following all applicable laws, before and during the performance of the Services; (i) inform FOSS of all health and safety rules and regulations and any other reasonable security requirements that apply at Your premises; (j) obtain and maintain all necessary permits, authorizations, licenses, approvals, and consents and comply with all relevant legislation enabling FOSS to (i) deliver the Services at Your premises and (ii) to use the materials; ensure that any network that You connect FOSS Products to is sufficiently secure and in accordance with good industry practice; (k) to the extent that it may interfere with the performance of the FOSS Services, not provide or grant access to any equipment or system to be serviced to any third party for examination or disassembly; and (l) comply with any additional obligations as set out in the Order and the Specifications.
8.4	Updates. FOSS is entitled to update the Instrument Software, as it deems needed and appropriate. FOSS is not obliged to make any updated version of the Instrument Software available to You if You have not registered with FOSS, or if You have not paid the update fee (if any). Any update of the Instrument Software that is made available to You will be subject to the terms of this Agreement.		
8.5	Open source. The Instrument Software may contain components made available to the public as open source by a third party ("Open Source Software"). The Open Source Software used in the Instrument Software is available upon request together with the terms that apply to the use of the specific component.	10.6	Failure to comply with obligations. FOSS shall not be responsible, and have no liability, for any non-conformance, defect, delay, or other failure to comply with its obligations under this Agreement if caused by Your delay or failure to comply with Your obligations under this Agreement.
9	PERFORMANCE OF THE SERVICES		
9.1	Performance. FOSS shall in all material respects perform the Services in accordance with the Order, these Terms and the Service Specification.	10.7	Increase in prices due to delays. In case You delay the installation of the Product with more than sixty (60) days, FOSS reserves the right to increase the price of the Product to reflect the development in FOSS' Product pricing prevailing at such time.
9.2	Delivery locations. The Services can be provided (i) at the location of the Product, (ii) as FOSS supported self-replacement or (iii) at a FOSS service location, as specified in the Service Specification.	11	WARRANTIES
9.3	Time is not of the essence. FOSS will use reasonable efforts to meet any performance date or respond time for the Services specified in the Order or as otherwise arranged with You, however, any such date or response time shall be an estimate only and time shall not be of the essence for the performance of the Services.	11.1	Warranty on Products (i.e. FOSS instruments (including Process Instruments), Instrument Software, Reagents, Consumables and spare parts, cf. clause 1.3 above): FOSS warrants that the Products, at the time of Delivery, (i) conform in all material respects to the relevant Product Specifications, (ii) are free from defects in material and workmanship and remain so for the Warranty Period (as set out in clause 11.4 below), and (iii) are free of any third-party interests. If a Product does not conform with the foregoing and provided that You notify FOSS in writing hereof within the Warranty Period, FOSS shall, at its option, (i) repair the defective Product in question, (ii) replace such Product with a Product having substantially similar functionality, or, (iii) if FOSS is not able to repair or replace, offer a reasonable proportionate reduction of the price for the defective Product, or cancel the purchase of the defective Product and refund the fees for the Product against Your return of the Product.
9.4	Costs of prevented Services. If FOSS is prevented from performing the Services at the agreed time and location, due to decisions, acts or omissions of You, FOSS may charge a reasonable additional amount to cover FOSS' personnel idle time and expenses incurred.	11.2	Warranty on Services cf. clause 1.3 above: FOSS warrants that the Services shall be performed using reasonable care and skill. If the Services do not conform with the foregoing and provided that You notify FOSS in writing hereof within the Warranty Period (as set out in clause 11.4 below), FOSS shall, at its option, (i) reperform the Services or correct any non-conforming deliverables, or, (ii) if FOSS is not able to reperform or correct, as applicable, offer a reasonable proportionate reduction of the price for the non-conforming Services or terminate the Agreement (fully or partly) with respect to the Services and refund the fees for the Services against Your return of all related deliverables, if any.
9.5	Costs in connection with extraordinary conditions at Customer. If the installation and servicing of FOSS Products at Your site requires extraordinary efforts for FOSS due to Your conditions e.g. special requirements on Your part or complicated working- and access conditions on Your site, FOSS may invoice you for the documented costs incurred by FOSS as a result hereof.		
10	YOUR OBLIGATIONS		
10.1	You agree to maintain the Products and operate them in accordance with the Specifications and applicable manuals. It is Your responsibility to ensure that the Products and Services	11.3	Warranty Execution. FOSS undertakes that the warranties provided under this clause 11 shall be executed in a professional and workmanlike manner, in accordance with industry standards, within a reasonable

	timeframe and at FOSS' costs (i.e. including travel, time spent, any material or parts used and/or shipping costs, if depot/service center repair). At FOSS' discretion, such warranty execution may be carried out (i) at Your location, (ii) as remote reperformance/work by FOSS or its authorized representatives, or corrective actions via telephone, e-mail, virtual meeting, etc., or (iii) at a FOSS service location. In the latter case, FOSS will reimburse any reasonable and documented transportation costs that You might incur.	
11.4	Warranty Period. The Warranty Period means:	12.3
	(a) with respect to new Products (excluding Reagents & Consumables): The period lasting until 365 days after the date of Delivery.	
	(b) with respect to refurbished Products (excluding Reagents & Consumables): The period lasting from the date of Delivery until 180 days after the date of Delivery.	12.4
	(c) with respect to Reagents & Consumables: The stated "expiration date" or ninety (90) days from the date of Delivery, whichever comes first.	12.5
	(d) with respect to Services; 365 days from the date of Delivery.	
	If FOSS repairs a Product under warranty, relevant parts can be replaced with new or refurbished parts, at FOSS' discretion. Any repaired or replacement Product shall be under warranty for the unexpired portion of the original Warranty Period and the Warranty Period shall not be extended.	
11.5	Repair or replacement work by FOSS after expiry of Warranty Period. For any repair or replacement work performed by FOSS after expiry of the applicable Warranty Period, FOSS shall be entitled to charge You for time spent and any materials or parts used.	12.6
11.6	Your own responsibilities. FOSS' warranty obligations do not cover failures resulting from: (i) normal wear and tear, accident, misuse or any other use not in accordance with the Product Specification, Service Specification, FOSS' documentation or industry practice; (ii) Your failure to provide power, air, supplies, storage conditions, or an operating environment that conforms to FOSS' documentation or industry practice; (iii) Your failure to follow the maintenance procedures in FOSS' documentation and guidance; (iv) Your failure to use the latest version of FOSS' embedded Instrument Software in the Product and/or an Process Instrument (v) repair or service by a third party not authorized by FOSS; (vi) the Products or any part thereof, being used, or coming into contact, with any instrument, parts, supplies, reagents or consumables not manufactured, distributed, or approved by FOSS; (vi) any modifications to the Products not approved by FOSS; or (vii) any breach by You of Your obligations under this Agreement.	13
11.7	FOSS agrees that you will be able to purchase Reagents & Consumables and spare parts for minimum seven (7) years after your purchase.	13.1
11.8	Except as expressly provided in this clause 11, the Products and Services are provided on an "as is" basis and FOSS excludes all warranties, representations, conditions, and other terms of any kind, whether express or implied (and whether implied by statute, common law, course of dealing, trade usage, or otherwise), including any conditions, warranties, or other terms as to correspondence with their description, the satisfactory quality, merchantability, fitness for a particular purpose, noninfringement, use of reasonable care and skill, or correspondence with sample.	13.2
12	INTELLECTUAL PROPERTY RIGHTS AND RIGHTS TO DATA	13.3
12.1	Pre-existing materials. Each Party and its licensors shall retain ownership of all intellectual property rights owned by such Party prior to the Agreement or developed independently of the Agreement.	14
12.2	Intellectual property rights in Instrument Software and material. FOSS and/or its licensors own all intellectual property rights in:	14.1
	(a) the Instrument Software;	
	(a) data provided by FOSS;	
	(b) the Product Specifications, Service Specifications, and any user manual, technical document, or other document related to the Products, Instrument Software or Services;	14.2
		(c) all products and materials developed by FOSS in relation to the Products, Instrument Software or Services in any media, including computer programs, data, diagrams, reports and specifications (including drafts); and
		(d) together with any modifications, developments or derivatives for each of the foregoing.
		Use right. FOSS grants You a royalty-free, non-exclusive, and non-transferable licence to make reasonable use of the material set out in clause 12.2 (a)- (d) solely to the extent necessary to receive and use the deliverables and/or Products. The license to use of Instrument Software is set out in clause 8.
		Customer Data. You shall own all rights in and to all Customer Data. FOSS has no responsibility or liability for the legality, reliability, integrity, accuracy and quality of the Customer Data.
		FOSS' use of Customer Data. In order for FOSS to improve, test, deliver and optimize the Products, Instrument Software, and/or Services and develop new solutions, You permit FOSS or a FOSS duly authorized representative to (i) get access to the FOSS provided systems and the Customer Data as well as data regarding Your use of the Products and Instrument Software, (ii) store such Customer Data and use-related data, and (iii) use such Customer Data and use-related data in an anonymised and consolidated form.
		Feedback. You may at Your option provide FOSS with any feedback, suggestion, recommendation, or comment regarding FOSS' business, services, products, or technology, including the Products and Services ("Feedback"). You acknowledge and agree that FOSS may retain and freely use, incorporate or otherwise exploit such Feedback without restriction or obligation to compensate or attribute You.
		INDEMNIFICATION
		FOSS indemnity. FOSS will defend You, at its own expense, against claims that Your use of the Products, deliverables, or Software in accordance with the Agreement infringes any third party intellectual property rights, and shall indemnify You for any amounts awarded against You in judgment or settlement of such claims, provided that (i) You give prompt written notice to FOSS, (ii) You do not make any admission, or otherwise attempt to compromise or settle the claim and cooperate with FOSS in the defense and settlement of the claim, and (iii) FOSS is given sole authority to defend or settle the claims.
		In the defence or settlement of a claim, FOSS may, (i) obtain the rights to continue the use of the Product, deliverable, or Software; (ii) modify the Product, deliverable, or Software to avoid the infringement; or (iii) replace the Product, deliverable, or Software with a functionally equivalent and non-infringing product, deliverable, or software. If such remedies are, in FOSS opinion, not commercially reasonable, FOSS may instead terminate the Agreement with respect to the infringing Product, deliverable, or Software without any additional liability or obligation.
		You must notify FOSS in writing no later than five (5) days after You have become aware of a claim or a potential third-party claim as set out in clause 13.1 above. You must, at Your own cost, provide FOSS with the assistance, information and authority, which in the reasonable opinion of FOSS will be necessary to perform FOSS' obligations under this clause, including defending the claim.
		LIMITATION OF LIABILITY
		Limitation of liability. FOSS shall not be liable under any circumstances for loss of profits, loss of data, or any indirect, consequential, incidental, special, or punitive damages even if advised of the possibility of such damages and irrespective of the basis for such claim, including those based on breach of warranty, breach of contract, negligence, tort, or any other legal, equitable or statutory claim, cause of action or legal theory.
		Liability cap. FOSS' total aggregate liability, including for proportionate reduction, arising out of or in connection with the Agreement shall be limited to the following:
		(a) in respect of claims related to Products or Services (other than Recurring Services); twice the purchase price for the relevant Product or Service associated with the claim; and
		(b) in respect of claims related to Recurring Services; the fees paid by You under the Agreement for the Service associated with the claim during the preceding twelve (12) months; and
		(c) in respect of all other loss or damage which does not fall within sub-clause (a) or (b); an amount of EUR 150,000 (one hundred and fifty thousand).

14.3	The limitations and exclusions of liability in this clause 14 shall also apply to any product liability claims.		cyber security attacks, interruption or failure of the internet or any utility service, or other similar causes.
14.4	General exceptions from the limitation of liability. Clause 14, shall not limit any liability for: (i) death or personal injury caused by negligence; (ii) intellectual property indemnification as set out in clause 13; (iii) fraudulent acts or omissions, or (vi) wilful misconduct.	19	CONFIDENTIALITY
15	DATA REGULATION	19.1	Both Parties shall keep information received from the other Party, including the content of Orders, confidential and shall not disclose it to any third party. Both Parties shall take reasonable steps to prevent unauthorised disclosure or use of confidential information. The obligations of confidentiality and non-use shall not apply to information (i) which at the time of disclosure hereunder is, or later becomes, part of the public domain; (ii) which the recipient can show to have been in possession of at the time of disclosure, or has been made available from a third party with the right to disclose it; or (iii) which the recipient is required by law to disclose.
15.1	GDPR compliance. FOSS is committed to be in full compliance with applicable data protection rules - including the European General Data Protection Regulation (GDPR). FOSS is the data controller for the personal data processed pursuant to this Agreement. By placing an Order and submitting Your details, You agree that FOSS may keep Your personal data in our files and process it in accordance with FOSS' Privacy Policy available at: https://www.fossanalytics.com/en/news-articles/policies/data-privacy-policy .	20	TERM AND TERMINATION
16	COMPLIANCE WITH LAWS	20.1	Term and Renewal. The Agreement shall remain in effect:
16.1	Applicable laws. Each Party shall comply with all mandatory laws, rules, and regulations applicable to the Party's obligations under the Agreement.		(a) with respect to Products and Services (other than Recurring Services); until the Products and Services have been delivered; and (b) [RESERVED]
16.2	Increase in fees. In the event of any changes in laws, rules, regulations, industry codes, regulatory policies, or government authorities' practise, decisions, or guidelines that impact FOSS' performance or cost of providing the Products or Services, FOSS may, at its sole discretion, require an adjustment to the fees for the ordered Products and/or Services to reasonably account for such impacts.	20.2	Termination for convenience. [RESERVED]
16.3	Export Control and Sanctions Laws. [RESERVED]		Termination for cause. Either Party may terminate the Agreement (and any Service) with immediate effect if the other Party fails to remedy any material breach of the Agreement within thirty (30) days of receiving written notice of such breach. For the avoidance of doubt, overdue payment is considered a material breach.
	INSURANCE	20.3	ASSIGNMENT AND USE OF SUBCONTRACTORS
	FOSS and You will take out customary insurance to cover its respective liabilities under the Agreement.		Assignment. You may not assign, novate, or otherwise transfer any of Your rights under the Agreement, and any such attempt is void. F
	For Products delivered at Your site prior to Your payment in full of the agreed purchase price, FOSS has taken out insurance coverage for the Products covering damage on-site before installation (e.g. fire, flooding) for sixty (60) days after delivery. It is Your responsibility to take out customary insurance hereafter or request an extension of FOSS' insurance coverage against payment of an additional fee.	21	FOSS subcontractors. FOSS may freely use subcontractors, including outsourcing partners, and remains responsible for services provided by such subcontractors as if they were provided directly by FOSS on its own.
	FORCE MAJEURE	21.1	FOSS' COMPLIANCE, SUSTAINABILITY AND QUALITY STATEMENT
	FOSS shall not be liable for delays or failure in performance of any of its obligations resulting from causes beyond its reasonable control, such as natural disasters, fire, strikes, embargos, acts of government, war, epidemic, pandemic, denial-of-service or	21.2	FOSS policies. FOSS is committed to the preservation of our reputation and integrity through compliance with applicable laws and regulations for the intended use of Products and Services as set out in the Specifications and ethical standards in each of the markets in which we operate. To underline the importance of this commitment, FOSS has formulated a number of policies, which FOSS maintains and continuously complies with. For further information on our policies please visit www.fossanalytics.com . The policies may be subject to updates.
17		22	
17.1		22.1	FOSS' ethics and compliance efforts are supplemented by an independently verified whistle-blower system. Employees, business partners, as well as third parties have the opportunity to voice concerns or report irregular behaviour at any time on our external website at https://foss.whistleblownetwork.net .
17.2		22.2	Acting responsibly and with integrity has been our approach to doing business since the inception of our company in 1956 by Nils Foss. FOSS is an active participant of the UN Global Compact and a member of SEDEX (Supplier Ethical Data Exchange), the world's largest platform for sharing responsible sourcing data on supply chains. Please see more at www.fossanalytics.com/en/about-foss/sustainability .
18		22.3	A guiding principle for FOSS is that all Products and Services shall be of the highest standards of quality and therefore FOSS is certified to both ISO9001 (Quality Management) and ISO27001 (Information Security
18.1		22.4	

Management). These and other certificates can be found at www.fossanalytics.com/en/support/certificates.

- 23
- ENTIRE AGREEMENT, MODIFICATIONS AND WAIVER
- 23.1
- Entire agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they relate in any way to the subject matter hereof.
- 23.2
- Modifications.** FOSS may revise these Terms from time to time and the most current version will always be posted on our website. Revised Terms will not apply for already delivered Products and Services.
- 23.3
- Survival.** If any provision of these Terms shall be deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired and will continue to be valid and enforceable to the fullest extent permitted by law. Failure to

strictly enforce any of these Terms shall not be considered a waiver of any of FOSS' rights hereunder.

- 24
- GOVERNING LAW AND JURISDICTION
- 24.1
- Governing law.** [RESERVED]
-
- Jurisdiction.** [RESERVED]
- 24.2
- Notices.** All Your notices to FOSS relating to the Agreement shall be sent to Your account responsible designated on the Order and with a copy to legal@foss.dk. All FOSS' notices to You relating to the Agreement shall be sent to the email address designated on the Order.
- 24.3
-

Should I ask about the VENDOR CONTRACT ADDENDUM

This addendum (“Addendum”) amends and supplements the **Terms and Conditions Product and Services** (“Agreement”) between Prairie View A&M University, a member of The Texas A&M University System (“A&M System”) and an agency of the state of Texas (“PVAMU”), and FOSS North America Inc., is a regionally based sales, applications, and customer support subsidiary serving the United States and Canada, (“Provider”) dated June 16, 2026. All terms used herein and not otherwise defined shall have the same meaning as in the Agreement. PVAMU and Provider may be individually referred to as “Party” or collectively referred to as “Parties.” Both Parties agree that the Agreement is hereby amended and supplemented as follows:

1. This Addendum is incorporated into the Agreement and in the event of any conflict in the terms of the Agreement and the terms of this Addendum, the terms of this Addendum shall in all aspects govern and control.
2. The following language is added to the Agreement:

MISCELLANEOUS CLAUSES

Compliance with Laws. Each Party shall comply with all federal, state, and local laws, executive orders, rules, and regulations applicable to the performance of its obligations under this Agreement.

Data Privacy. Provider shall hold PVAMU’s data in confidence. Provider shall only use or disclose PVAMU’s data for the purpose of fulfilling Provider’s obligations under this Agreement, as required by law, or as otherwise authorized in writing by PVAMU. Provider shall restrict disclosure of the PVAMU’s data solely to those employees, subcontractors or agents of Provider that have a need to access the PVAMU’s data in order for Provider to perform its obligations under this Agreement. Provider shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on Provider in this Agreement.

Provider shall, within two (2) days of discovery, report to PVAMU any use or disclosure of PVAMU’s data not authorized by this Agreement or in writing by PVAMU. Provider’s report must identify: (a) the nature of the unauthorized use or disclosure, (b) the PVAMU data used or disclosed, (c) who made the unauthorized use or received the unauthorized disclosure, (d) what Provider has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action Provider has taken or will take to prevent future similar unauthorized use or disclosure. Provider shall provide such other information, including a written report, as reasonably requested by PVAMU.

Provider must promptly notify PVAMU of any legal request for PVAMU’s data from a third party and take (and assist PVAMU in taking) appropriate steps not to disclose such PVAMU data.

Within thirty (30) days of the expiration or termination of this Agreement, Provider, as directed by PVAMU, shall return all PVAMU data to PVAMU in its possession (or in the possession of any of its subcontractors or agents) or delete all such PVAMU data if return is not feasible. Provider shall provide PVAMU with at least ten (10) days’ written notice of Provider’s intent to delete such PVAMU data, and shall confirm such deletion in writing.

Entire Agreement. This Agreement constitutes the entire and only agreement between the Parties relating to the subject matter hereof and supersedes any prior understanding, written or oral agreements

between the Parties, or “side deals” which are not described in this Agreement. This Agreement may be amended only by a subsequent written agreement signed by authorized representatives of both Parties.

Force Majeure. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party’s reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).

Indemnification. Subject to the statutory duties of the Texas Attorney General, Provider shall indemnify, defend and hold harmless PVAMU, A&M System, and their regents, employees and agents (collectively, the “A&M System Indemnitees”) from and against any demands, liabilities, expense or loss asserted against A&M System Indemnities (each, a “Claim”) arising out of or related to (i) an allegation that any of the good or services provided by Provider under this Agreement infringe upon, misappropriate, or otherwise violate the intellectual property rights of a third party; (ii) Provider’s breach of any certification, representation, or warranty contained in this Agreement; or (iii) any acts or omissions of Provider or its employees or agents pertaining to the activities and obligations under this Agreement, except to the extent such Claim arises from an A&M System Indemnitee’s gross negligence or willful misconduct.

Limitation of liability. Provider shall not be liable under any circumstances for loss of profits, loss of data, or any indirect, consequential, incidental, special, or punitive damages even if advised of the possibility of such damages and irrespective of the basis for such claim, including those based on breach of warranty, breach of contract, negligence, tort, or any other legal, equitable or statutory claim, cause of action or legal theory.

Liability cap. Provider’s total aggregate liability, including for proportionate reduction, arising out of or in connection with the Agreement, shall be limited to the following:

- in respect of claims related to Products or Services (other than Recurring Services); twice the purchase price for the relevant Product or Service associated with the claim; and
- in respect of claims related to Recurring Services; the fees paid by You under the Agreement for the Service associated with the claim during the preceding twelve (12) months; and
- in respect of all other loss or damage which does not fall within sub-clause (a) or (b); an amount of EUR 150,000 (one hundred and fifty thousand).

General exceptions from the limitation of liability. Provider shall not limit any liability for: (i) death or personal injury caused by negligence; (ii) fraudulent acts or omissions, or willful misconduct.

Independent Contractor. Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by Provider's service to PVAMU. Except as specifically required under the terms of this Agreement, Provider (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of PVAMU or A&M System. As an independent contractor, Provider is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. Provider and its employees shall observe and abide by all applicable policies, regulations, rules and procedures of PVAMU and A&M System, including those applicable to conduct on its premises.

Insurance. Provider shall obtain and maintain, for the duration of this Agreement, the minimum insurance coverage set forth on Appendix A hereof.

No Impediments. Provider represents and warrants that there are no obligations, commitments, third party rights, or impediments of any kind that will limit or prevent Provider's performance of the Services.

Non-Assignment. Provider shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of PVAMU. Any purported assignment in violation of this Section will be void.

Non-Waiver of Defaults. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement will in no way affect the right to require such performance at any time thereafter nor will the waiver by either Party of a breach of any provision be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

Notices. Any notice required or permitted under this Agreement must be in writing, and shall be deemed given: (i) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (ii) the next business day after it is sent by overnight carrier, (iii) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (iv) on the date of delivery if delivered personally. PVAMU and Provider can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

PVAMU:

Prairie View A&M University
Cooperative Agricultural Research Center
PO Box 519; MS 2008
Prairie View TX 77446
Attention: MD Salahuddin on behalf of Dr. Lohakare
Telephone: 936-261-5099 or 405-762-8508
Email: mdsalahuddin@pvamu.edu

With a copy to:

Prairie View A&M University Contract Administration
P.O. Box 519
Prairie View, Texas 77446-0519
Telephone: +1 936-261-1902
Email: Contracts@pvamu.edu

Provider:

FOSS North America Inc.
6509 Flying Cloud Drive Suite 130
Eden Prairie, MN 55344
Attention: Marcy Russell
Telephone: 612-840-7522
Email: mrussel@fossna.com

Organization. If Provider is a business entity, Provider 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 Provider has been duly authorized to act for and bind Provider. Upon PVAMU's request, Provider shall promptly deliver to PVAMU (i) a certificate of good standing certified by the appropriate governmental officer in its jurisdiction of incorporation or organization; and (ii) a certificate of fact issued by the Texas Secretary of State.

Refund of Deposit/Prepayment. In the event this Agreement is canceled and/or terminated by Provider for reason not attributable to PVAMU or if canceled and/or terminated by PVAMU for default of performance by Provider, then within thirty (30) days after cancellation and/or termination, Provider will reimburse PVAMU for all advance payments paid by PVAMU to Provider that were (i) not earned by Provider prior to cancellation and/or termination, or (ii) for goods or services that the PVAMU did not receive from Provider prior to cancellation and/or termination.

Severability. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.

Survival. Any provision of this Agreement that may reasonably be interpreted as being intended by the Parties to survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.

Termination. PVAMU may terminate this Agreement for no cause on thirty (30) days' written notice to Provider. Furthermore, any provision automatically renewing or extending the term of this Agreement shall have no effect or be enforceable against PVAMU under this Agreement.

U.S. Currency. All amounts payable hereunder shall be paid in United States dollars.

Use of Name. Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading. The Parties will mutually agree in advance upon any public announcements, or communications to the media regarding this Agreement or the services to be provided pursuant to this Agreement.

STATE AGENCY CLAUSES

Access by Individuals with Disabilities. Provider represents and warrants that the goods and services provided hereunder comply with the accessibility requirements in Title 1, Chapters 206 and 213 of the *Texas Administrative Code* and Title II of the Americans with Disabilities Act and the technical standards set forth in the Web Content Accessibility Guidelines 2.1, level AA (available at <https://www.w3.org/TR/WCAG21>), as published by the Web Accessibility Initiative of the World Wide Web Consortium (the “Accessibility Warranty”). Provider shall promptly respond to and use commercially reasonable efforts to resolve and remediate any noncompliance with the Accessibility Warranty. In the event that Provider fails or is unable to do so, PVAMU may immediately terminate this Agreement, and Provider will refund to PVAMU all amounts paid by PVAMU under this Agreement within thirty (30) days following the effective date of termination.

Access to Agency Data. Pursuant to Section 2054.138, Texas Government Code, Provider shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, the security control baseline required by the then-current risk and authorization management program established by the Texas Department of Information Resources (“TX-RAMP”), to safeguard and preserve the confidentiality, integrity, and availability of PVAMU’s data (the “Security Controls”). Upon written request by PVAMU, Provider shall provide PVAMU with evidence or a copy of the certification of its compliance with the Security Controls within thirty (30) days of such request.

Cloud Computing Services. As of the Effective Date, Provider certifies that it complies with the then-current requirements of TX-RAMP. Pursuant to Section 2063.408, Texas Government Code, Provider shall maintain TX-RAMP compliance and certification, as may be amended from time to time, throughout the Term, including any renewal term of this Agreement. Provider shall provide PVAMU with evidence of its TX-RAMP compliance and certification within thirty (30) days of PVAMU’s request and at least thirty (30) days prior to the start of any renewal term of this Agreement. In the event that Provider fails to maintain TX-RAMP compliance and certification throughout the Term, including any renewal term, PVAMU may immediately terminate this Agreement, and Provider will provide a refund to PVAMU of any prepaid fees.

Conflict of Interest. Provider certifies, to the best of their knowledge and belief, that no member of the A&M System Board of Regents, nor any employee of PVAMU or A&M System, has a direct or indirect financial interest in Provider or in the transaction that is the subject of this Agreement.

Cybersecurity Training Program. Pursuant to Section 2063.104, Texas Government Code, Provider and its employees, officers, and subcontractors who have access to PVAMU’s computer system and/or database must complete a cybersecurity training program certified under Section 2063.104, Texas Government Code, and selected by PVAMU. The cybersecurity training program must be completed by Provider employees, officers, and subcontractors during the Term and any renewal period of this Agreement. Provider shall verify completion of the program in writing to PVAMU within the first thirty (30) calendar days of the Term and any renewal period of this Agreement. Provider acknowledges and agrees that its failure to comply with the requirements of this Section are grounds for PVAMU to terminate this Agreement for cause.

Delinquent Child Support Obligations. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or

the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, *Texas Family Code*, Provider certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

Dispute Resolution. To the extent that Chapter 2260, *Texas Government Code* is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by PVAMU and Provider to attempt to resolve any claim for breach of contract made by Provider that cannot be resolved in the ordinary course of business. Provider shall submit written notice of a claim of breach of contract under this Chapter to the Senior Vice-President for Business Affairs & CFO of PVAMU, who shall examine Provider's claim and any counterclaim and negotiate with Provider in an effort to resolve the claim. This provision and nothing in this Agreement waives PVAMU's sovereign immunity to suit or liability, and PVAMU has not waived its right to seek redress in the courts.

Executive Order GA-43. To the extent that Provider is providing goods to PVAMU under this Agreement, Provider represents and warrants that the goods are not produced in or exported from the Gaza Strip or from any organization or state actor with ties to Hamas.

Executive Order GA-48. Provider represents and warrants that Provider is not and, if applicable, none of its holding companies or subsidiaries are (i) listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA") regarding telecommunications and video surveillance; (ii) listed in Section 1260H of the 2021 NDAA regarding Chinese military companies in the US; (iii) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4 ("15 C.F.R. § 791.4 List"); or (iv) controlled by any governing or regulatory body located in a country on the 15 C.F.R. § 791.4 List. Provider acknowledges that a false certification is a material breach of contract and is grounds for immediate termination of this Agreement with no further obligation on the part of PVAMU or the A&M System. If this Agreement is terminated due to a false certification, Provider will immediately reimburse PVAMU for all prepaid costs.

Export Control. PVAMU is subject to United States laws and regulations controlling the export of technical data, software, laboratory prototypes, and other commodities, and its obligations under this Agreement are contingent on compliance with applicable laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States government or written assurances by Provider that Provider will not export data or commodities to certain countries without advance approval of that agency. PVAMU neither represents that a license will not be required nor that, if required, it will be issued. Provider shall comply with all applicable export laws and regulations and may not export or allow the export or re-export of commodities or technical data in violation of those laws or regulations. Provider certifies that none of its personnel participating in the activities under this Agreement is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

FERPA. If applicable, for purposes of the Family Educational Rights and Privacy Act ("FERPA"), PVAMU hereby designates Provider as a school official with a legitimate educational interest in any education records (as defined in FERPA) that Provider is required to create, access, receive, or maintain to fulfill its obligations under this Agreement. Provider shall comply with FERPA as to any such education records and is prohibited from redisclosure of the education records except as provided for in this

Agreement or otherwise authorized by FERPA or PVAMU in writing. Provider is only permitted to use the education records for the purpose of fulfilling its obligations under this Agreement and shall restrict disclosure of the education records solely to those employees, subcontractors or agents who have a need to access the education records for such purpose. Provider shall require any such subcontractors or agents to comply with the same restrictions and obligations imposed on Provider in this Section, including without limitation, the prohibition on redisclosure. Provider shall implement and maintain reasonable administrative, technical, and physical safeguards to secure the education records from unauthorized access, disclosure or use.

Franchise Tax Certification. If Provider is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Provider certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Provider is exempt from the payment of franchise (margin) taxes.

Governing Law. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.

Venue. Pursuant to Section 85.18(b), Texas Education Code, mandatory venue for all legal proceedings against PVAMU is to be in the county in which the principal office of PVAMU's governing officer is located.

VetHUB Subcontracting Plan. Provider has indicated it will not subcontract any of its duties or obligations under this Agreement. If Provider will subcontract any of its duties and obligations under this Agreement, Provider will be required to provide prior written notice to PVAMU and make a good faith effort to submit a subcontracting plan, pursuant to the Veteran Heroes United In Business Program (HUB or VetHUB) as required under Section 20.285 of the Texas Administrative Code.

Limitations. As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of PVAMU to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on PVAMU's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Terms and conditions related to the Limitations will not be binding on PVAMU except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by PVAMU nor any other conduct, action, or inaction of any representative of PVAMU relating to this Agreement constitutes or is intended to constitute a waiver of PVAMU's or the state's sovereign immunity.

Loss of Funding. Performance by PVAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, PVAMU will issue written notice to Provider and PVAMU may terminate this Agreement without further duty or obligation hereunder. Provider acknowledges that appropriation of funds is beyond the control of PVAMU. In the event of a termination or cancellation under this Section, PVAMU will not be liable to Provider for any damages that are caused or associated with such termination or cancellation.

Not Eligible for Rehire. Provider is responsible for ensuring that its employees involved in any work being performed for PVAMU under this Agreement have not been designated as “Not Eligible for Rehire” as defined in A&M System policy 32.02, Discipline and Dismissal of Employees, Section 4 (“NEFR Employee”). In the event PVAMU becomes aware that Provider has a NEFR Employee involved in any work being performed under this Agreement, PVAMU will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by PVAMU.

Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Provider agrees that any payments owing to Provider under this Agreement may be applied directly toward certain debts or delinquencies that Provider owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

Prior Employment. Provider acknowledges that Section 2252.901, *Texas Government Code*, prohibits PVAMU from using state appropriated funds to enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with individual who has been previously employed by PVAMU during the twelve (12) month period immediately prior to the effective date of the Agreement. If Provider is an individual, by signing this Agreement, Provider represents and warrants that it is not a former or retired employee of PVAMU that was employed by PVAMU during the twelve (12) month period immediately prior to the effective date of the Agreement.

Prohibited Software, Applications, and Developers. Provider certifies that it is not: (a) an entity listed on the Higher Education Research Security Council’s list of prohibited software/applications/developers at <https://www.highered.texas.gov/prohibited-software-applications-developers/> (the “HERSC List”), or a subsidiary or affiliate of such an entity, or (b) providing, under this Agreement, software that is either on or provided by an entity on the HERSC List. Provider acknowledges this Agreement may be terminated for cause immediately if this certification is inaccurate, and Provider will refund to PVAMU all amounts prepaid by PVAMU under this Agreement within thirty (30) days following the effective date of termination.

Prohibition on Contracts with Companies Boycotting Energy Companies. To the extent that Chapter 2276, *Texas Government Code*, is applicable to this Agreement, Provider certifies that (i) it does not boycott energy companies, and (ii) it will not boycott energy companies during the term of this Agreement. Provider acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.

Prohibition on Contracts with Companies Boycotting Israel. To the extent that Chapter 2271, *Texas Government Code*, is applicable to this Agreement, Provider certifies that (i) it does not currently boycott Israel, and (ii) it will not boycott Israel during the Term of this Agreement. Provider acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.

Prohibition on Contracts with Companies Discriminating Against Firearm Entities and Trade Associations. To the extent that Chapter 2274, *Texas Government Code*, is applicable to this Agreement, Provider certifies that (i) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (ii) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. Provider acknowledges this Agreement may be terminated for cause and payment withheld if this certification is inaccurate.

Prohibition on Contracts with Companies Engaging in Business with Certain Countries and Organizations. Provider certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, *Texas Government Code*. Provider acknowledges this Agreement may be terminated for cause immediately if this certification is inaccurate.

Prompt Payment. PVAMU will make payment on a properly prepared and submitted invoice in accordance with Chapter 2251, *Texas Government Code* (the “Texas Prompt Payment Act”), which shall govern remittance of payment and remedies for late payment and non-payment.

Public Information. Provider acknowledges that PVAMU is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law. Upon PVAMU’s written request, and at no cost to PVAMU, Provider will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of PVAMU in a non-proprietary format acceptable to PVAMU that is accessible by the public. Provider acknowledges that PVAMU may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*. The requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to this Agreement and Provider agrees that this Agreement can be terminated if Provider knowingly or intentionally fails to comply with a requirement of that subchapter.

State Auditor’s Office. Provider understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor’s Office, or any successor agency (collectively, “Auditor”), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Provider agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Provider will include this provision in all contracts with permitted subcontractors.

Tax Exempt. As an agency of the State of Texas, PVAMU is tax exempt. Tax exemption certification will be furnished to Provider upon request.

(SIGNATURES TO FOLLOW ON NEXT PAGE)

ACCEPTED & AGREED:

PRAIRIE VIEW A&M UNIVERSITY

FOSS NORTH AMERICA INC.

W.K.K.
Signature

Wayne Knox
Name

Associate Vice President for Business Affairs
Title

7/23/2026 | 9:22 AM CDT
Date

Marcy Russell
Signature

Marcy Russell
Name

Industry Sales Manager
Title

7/22/2026 | 1:30 PM PDT
Date

James R. McKee

Sr. Vice President, Chief Financial Officer

8/10/2026 | 8:13 AM CDT