

**THE TEXAS A&M UNIVERSITY SYSTEM
INTRASYSTEM COOPERATION CONTRACT**

THIS CONTRACT AND AGREEMENT is entered into by and between the members of The Texas A&M University System shown below as Contracting Parties.

I. CONTRACTING PARTIES:

Receiving Party: Texas Division of Emergency Management (TDEM)

Performing Party: Texas A&M Engineering and Extension Service (TEEX)

II. STATEMENT OF SERVICES TO BE PERFORMED:

TEEX shall provide Hosting, Maintenance, and Technical Support (HMTS); and custom programming during this Contract's period of performance for the Preparingtexas.org website and the components supported within the website such as the Learning Management System (LMS).

III. STATEMENT OF PURPOSE:

The purpose of this Contract is to memorialize past performance and to document agreed upon services to occur in the future.

Under the authority of the Governor, preparingtexas.org has been declared an essential function under the auspices of the State Administrative Agency (SAA) and is required to ensure that appropriate homeland security training is available to and completed by leaders and first responders with such responsibilities.

IV. RESPONSIBILITIES:

A. TEEX RESPONSIBILITIES

Hosting, Maintenance and Technical Support (HMTS)

TEEX shall continue HMTS of the preparingtexas.org web portal and the Learning Management System for the duration of this Contract.

B. TXDPS RESPONSIBILITIES:

Identify personnel who will serve as the Point of Contact for HMTS matters; and custom programming.

V. BASIS FOR CALCULATING REIMBURSABLE COSTS:

TDEM shall pay to TEEX for services provided as described in Attachment B, Budget Summary and Detail.

HTMS shall be invoiced and paid in advance the amount of \$31,500.00 for the performance period of September 1, 2020 through August 31, 2021 and for each subsequent renewal period, if exercised.

Custom programming requests shall be billed at the Standard Request hourly rate of one hundred twenty five and 00/100 dollars (\$125.00), or at the Rush Request hourly rate of one hundred fifty and 00/100 dollars (\$150.00), as described in Attachment B, Service Level Agreement.

VI. CONTRACT AMOUNT:

The total amount of this Contract shall not exceed thirty-one thousand, five hundred and 00/100 dollars (\$31,500.00).

VII. PAYMENT FOR SERVICES:

A. TDEM shall pay for services received pursuant to this Contract from appropriation item(s) or account(s) of TDEM from which like expenditures would normally be paid, based upon vouchers drawn by TDEM payable to TEEX.

B. Except for payment of services related to HTMS, payment for all services performed by TEEX shall be billed on monthly invoices.

C. Payment for services related to the programming required to establish an electronic process or for annual programming maintenance shall be made to TEEX upon completion of the programming, in accordance with the provisions of Texas Government Code, Title 10, Section 2251.

D. For payment purposes, TEEX shall submit to TDEM an invoice with TEEX Reoccurring Transaction Index (RTI) number (funds for transfer at the Treasury) or a Purchase Voucher (for deposit in the Treasury). TEEX shall submit the invoice or voucher and supporting documentation to:

Texas Division of Emergency Management
Accounts Payable
1033 La Posada, Suite 300
Austin, Texas 78752
Or via email at: TDEM.OMB@tdem.texas.gov

E. Upon receipt of a proper invoice, TDEM shall pay TEEX for services received with a voucher, direct deposit, interagency transfer, or other method as agreed upon by both Parties and allowed by the Uniform Statewide Accounting System (USAS). TDEM shall enter the payment information into USAS or any subsequent state financial system.

F. Payments received by TEEX shall be credited to its current appropriation item(s) or account(s) from which the expenditures of that character were originally made.



G. In the event that TDEM fails to pay TEEX within thirty (30) days of receipt of a reconciled and correct invoice, the provisions of Texas Government Code, Title 10, Section 2251.025 will apply to this Contract.

VIII. TERM OF CONTRACT:

A. This Contract shall be effective September 1, 2020 and shall terminate on August 31, 2021, unless terminated sooner in accordance with Section XI.

B. This Contract term may be extended for three (3) one (1) year renewal options upon written agreement of both Parties.

IX. RELATIONSHIP OF PARTIES:

A. The Parties are associated only for the purposes and to the extent set forth herein, and with respect to the performance of services hereunder, the Parties are and shall be independent contractors and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to their duties hereunder. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principal-agent, or to otherwise create any liability for the Parties whatsoever with respect to the indebtedness, liabilities, and obligations of the other party to this Contract or any other party.

B. Each party to this Contract shall have no liability whatsoever for the actions or omissions of an individual employed by another party, regardless of where the individual's actions or omissions occurred. Each party is solely responsible for the actions and/or omissions of its employees and officers; however, such responsibility is only to the extent required by Texas law. Where injury or property damage result from the joint or concurring negligence of the Parties, liability, if any, shall be shared by each party in accordance with the applicable laws of the State of Texas, subject to all defenses, including governmental immunity. These provisions are solely for the benefit of the Parties hereto and not for the benefit of any person or entity not a party hereto; nor shall any provision hereof be deemed a waiver of any defenses available by law.

C. This Contract does not create any rights in any person or entity other than the Parties listed herein.

D. No party has authority for, or on behalf of, the other except as provided in this Contract. No other authority, power, partnership, or rights are granted or implied.

E. TDEM reserves the right to require TEEX to replace its personnel whom TDEM judges to be incompetent, careless, unsuitable, or otherwise objectionable, or whose continued use is deemed contrary to the best interests of TDEM or the State of Texas. This provision shall not be deemed to give TDEM the right to require TEEX to terminate any TEEX employee's employment. Rather, this provision is intended to give TDEM

only the right to require that TEEX discontinue using an employee in the performance of this Contract.

X. DEFAULT AND TERMINATION:

A. In the event that either party fails to fulfill its contractual obligations as set forth herein, the other party shall provide written notification that possible breach of Contract has occurred. The Parties shall reach a mutually agreeable solution within twenty (20) calendar days of notification. If an agreeable solution cannot be reached within twenty (20) calendar days of notification, the Parties reserve the right to terminate this Contract upon ten (10) calendar days written notice to the other party.

B. Either party may terminate this Contract, without cause, upon thirty (30) calendar days' prior written notice to the other party. Upon termination, TEEX shall be entitled to receive from TDEM payment for all services satisfactorily furnished under this Contract up to and including the date of termination.

C. This Contract may be terminated before the stated termination date by mutual agreement and consent, in writing of the Parties. Upon termination, TEEX shall be entitled to receive from TDEM payment for all services satisfactorily furnished under this Contract up to and including the date of termination.

D. This Contract is contingent upon the continued availability of funding. In the event of non-appropriation, TDEM may restrict, reduce, or terminate funding under this Contract.

E. Within twenty (20) calendar days after the effective date of termination, TDEM shall submit its statement for services rendered prior to the date of termination, and TEEX shall be entitled to receive from TDEM payment for all services satisfactorily furnished under this Contract up to and including the date of termination.

XI. DISPUTE RESOLUTION:

A. Any dispute arising under this Contract, which is not disposed of by mutual agreement between TDEM and TEEX shall be resolved as follows:

1. The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by the TDEM and TEEX to attempt to resolve any claim for breach of Contract made by TEEX.

2. TEEX's claim for breach of this Contract that the Parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, Subchapter B, of the Government Code.

3. To initiate the process, TEEX shall submit written notice, as required by Subchapter B, to the Data, Purchasing and HUB Coordination Manager, 3124 TAMU, College Station, Texas 77843-3124.

4. Said notice shall specifically state the provisions of Chapter 2260, Subchapter B are being invoked, and shall also be given to all other representatives of the TDEM and TEEEX otherwise entitled to notice under the Parties' Contract.
 5. Compliance by TEEEX with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Government Code.
 6. The contested case process provided in Chapter 2260, Subchapter C, of the Government Code is TEEEX's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the TDEM if the Parties are unable to resolve their disputes under subparagraph (A) of this paragraph.
 7. Compliance with the contested case process provided in Subchapter C is a condition precedent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code.
 8. Neither the execution of this Contract by the TDEM nor any other conduct of any representative of TDEM related to the Contract shall be considered a waiver of sovereign immunity to suit.
- B. In addition to complying with Chapter 2260 of the Government Code, the TDEM and TEEEX shall comply with the rule published in the Texas Administrative Code, Title 19, Education, Part I, Texas Higher Education Coordination Board, Chapter 1, Agency Administration, Subchapter B, Dispute Resolution.
- C. At all times during the course of the dispute resolution process, TEEEX shall continue with providing services as directed, in a diligent manner and without delay, shall conform to the TDEM's directive, decision or order, and shall be governed by all applicable provisions of this Contract.
- D. Records of the services performed shall be kept in sufficient detail to enable payment in accordance with applicable provisions of this Contract, if this should become necessary.
- E. This provision shall not be construed to prohibit TEEEX from seeking any other legal or equitable remedy to which it is entitled.

XII. NOTICES:

All contractual matters and correspondence regarding this Contract shall be addressed to:

Performing Party:

Texas A&M Engineering Extension Service
Knowledge Engineering
200 Technology Way

College Station, TX 77845-3424
Attn: Jonathan Dikes
Telephone Number: 979-458-6887
Facsimile Number: 979-458-6838
E-mail: jonathan.dikes@teex.tamu.edu

Receiving Party:

Texas Division of Emergency Management
1033 La Posada, Suite 300
Austin, Texas 78752
Attn: Vera Hughes, Ph.D., Preparedness Section Administrator
Telephone Number: (512) 486-2397
Facsimile Number: (512) 424-2445
E-mail: vera.hughes@tdem.texas.gov

All notices required or permitted under this Contract shall be in writing and shall be deemed received:

(1) when delivered in hand and a receipt granted; (2) three (3) days after it is deposited in the United States mail by certified mail, return receipt request; or (3) when received if sent by confirmed facsimile or electronic mail. Either of the Parties may change its address or designated individual(s) to receive notices by giving the other party written notice as provided above, specifying the new address and/or individual and the date upon which it shall become effective.

XIII. MISCELLANEOUS:

A. This section is intentionally left blank.

B. Choice of Law and Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Texas. Except as otherwise provided by Texas Government Code, Chapter 2260, venue for any litigation shall be Travis County, Texas.

C. Non-Incorporation. This Contract, together with the provisions incorporated herein by reference, contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. Any oral representations, modifications, or understandings outside the terms of this Contract shall be of no force or effect.

D. Severability. This Contract is executed in multiple counterparts, each of which shall constitute an original. If any part of this Contract is determined to be void or unenforceable, all other parts remain in force and effect.

E. Compliance with Laws. The Parties shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Contract.

F. Availability of TDEM Resources. All of TDEM obligations and requirements are subject to the availability of TDEM resources and are subject to the practicability of TDEM to perform such obligations and requirements. The determination regarding availability of TDEM resources, the assignment of such resources and the practicability of TDEM to perform such obligations and requirements is within the sole discretion of TDEM management.

G. This section is intentionally left blank.

H. Survival. Any provisions of this Contract that impose continuing obligations on the Parties shall survive the expiration or termination of this Contract for any reason.

I. Interpretation Against the Drafter. Regardless of which party drafted this Contract or the language at issue, any ambiguities in this Contract or the language at issue shall not be interpreted against the drafting party.

J. Force Majeure. Neither party shall be liable to the other party for any delay in performance of, or failure to perform any obligation contained herein caused by force majeure, provided the party seeking to be excused has prudently and promptly acted to take any and all reasonable corrective measures that are within such party's control; and provided, further, that any action or inaction by a subcontractor of a party shall not be considered to be outside the control of such party except the Parties may expressly agree otherwise in this Contract. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been corrected. Force majeure is defined as those causes beyond the control of the party required to perform that are generally recognized under Texas law as a force majeure event, such as acts of God, acts of war, epidemic and court orders.

K. This section is intentionally left blank.

L. Certifications. The Parties do hereby certify that: (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of the State Government; (2) the proposed arrangements serve the interest of efficient and economical administration of the State Government; and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

M. TEEX Legal Authority. TEEX further certifies that it has the authority to contract for the above services by the authority granted in Texas Education Code, Section 88.001.

N. TDEM Legal Authority. TDEM further certifies that it has the authority to perform the services contracted for by authority granted in Texas Government Code, Chapters 411 and 418.

O. Signature Authority. The signatories for the Parties hereby represent and warrant that he/she is an officer of the organization for which he/she has executed this Contract and that he/she has full and complete authority to enter into this Contract on behalf of the organization.

THE UNDERSIGNED CONTRACTING PARTIES do hereby certify that: (1) the services specified above are necessary and authorized for activities that are properly within the statutory functions and programs of the affected members of The Texas A&M University System, and (2) the services, materials, or equipment contracted for are not required by Section 21 of Article XVI of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

Receiving Party further certifies that it has the authority to contract for the above services by authority granted in *Texas Education Code* Chapter _____.

Performing Party further certifies that it has authority to perform the services contracted for by authority granted in *Texas Government Code* 88.001(5).

The undersigned parties bind themselves to the faithful performance of this contract.

RECEIVING PARTY:

Authorized Signature

Title

Date

PERFORMING PARTY:

Texas A&M Engineering Extension Service

[Signature]
Authorized Signature

Associate Agency Director/CFO
Title

8-27-2020
Date

ATTACHMENT A

BUDGET SUMMARY AND DETAIL

BUDGET SUMMARY

* This can be expanded for as many Projects, Index Codes, and Fiscal Years as the contract requires.

[illegible]

BUDGET DETAIL

(Using the budget categories above, amplify as needed to clearly describe planned expenditures)

HMTS - INDEX B

Contractual – Ongoing hosting, maintenance, and technical support of the preparingtexas.org portal and the LMS platform

Thirty-One Thousand, Five Hundred Dollars (\$31,500.00)

ATTACHMENT B

SERVICE LEVEL AGREEMENT

Attachment B – PreparingTexas.org System Service Level Agreement (SLA)
Service Provider (SP): Knowledge Engineering Center
Service Receiver (SR): TDEM

SLA Key Area 1: Hosting and Maintenance

Patches, upgrades, back-ups or other maintenance of server hardware or software on which the system is hosted. TEEEX will host the system on TEEEX public web server farm. TEEEX server cluster relies on an array of virtual machines to provide a fault-tolerant hardware fail-over mechanism. All TEEEX hardware is housed behind the Texas A&M firewall in a secure data center that is supported by a backup generator. All data stored in TEEEX cluster is replicated to fault-tolerant off-site storage area network (SAN).

Web applications are hosted on Microsoft Servers utilizing IIS and Microsoft SQL Server. The versions of these tools vary and are updated as needed to stay within the current versions supported by Microsoft.

Service Description	Metric	Target	SP Role/Res.	SR Role/Res.	Comments
1.1 Server Maintenance – Patches, upgrades, back-ups, or other maintenance of server hardware or software on which the system is hosted.		99.9%	✓		Does not include planned downtime
1.2 Maintain weekly application software and configuration data backups		100% restoration of custom application software	✓		
1.3 Maintain associated licenses, registrations and/or subscriptions.		100%	✓		Includes SSL certificate, URL registration, and Google Search subscription.



Attachment B – PreparingTexas.org System Service Level Agreement (SLA)
Service Provider (SP): Knowledge Engineering Center
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SLA Key Area 2: Technical Support

Tech support should be requested by emailing kec.support@teex.tamu.edu at any time or by calling 979-458-6710 during normal business hours (Monday-Friday, 8am-5 pm CT, with the exception of Agency holidays and closures).

Urgent tech support will be requested by emailing kec.support@teex.tamu.edu at any time and immediately followed by a phone call to 979-458-6710 or 979-458-6732 during normal business hours (Monday-Friday, 8am-5pm CT, with the exception of Agency holidays and closures). If the system is inaccessible during non-business hours, assistance can be requested by calling 979-458-6732 and pressing 0 to be forwarded to an after-hours number. The problem will be investigated immediately and rectified as soon as possible. Rush charges will not apply to urgent tech support requests.

Service Description	Metric	Target	SP Role/Res.	SR Role/Res.	Comments
2.1 Technical Support - Respond to phone or email questions from TDEM regarding how to use the system's features, and address any bugs or functionality issues.	Acknowledgement of request or solution sent within 12 business hours. Completion date communicated to TDEM within 24 business hours	Request accomplished by specified project dates	✓	✓	This support is provided for technical issues experienced by TDEM personnel only. TDEM will be responsible for supporting all end user derived content-related questions and issues.
2.2 Urgent Technical Support - A technical support request is considered urgent if the system is inaccessible to the end user as a result of coding errors, data insufficiencies, or server problems.	Restore functionality within 6 business hours	100% functionality restored	✓	✓	As necessary

**Attachment B – PreparingTexas.org System Service Level Agreement (SLA)
Service Provider (SP): Knowledge Engineering Center
Service Receiver (SR): TDEM**

<p>2.3 Bug fixes - Bugs occur when the system is not working as designed to the latest specifications. Corrections are made to the system to restore functionality of existing features. Bug fixes can result from coding errors or data insufficiencies, but do not constitute changes to the system requirements or additional/different functionality.</p>		<p>Request accomplished by specified project dates</p>	<p>√</p>	<p>√</p>	<p>Timeline for completion of bug fixes will correspond to the urgency of the request.</p>
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**Attachment B – PreparingTexas.org System Service Level Agreement (SLA)
Service Provider (SP): Knowledge Engineering Center
Service Receiver (SR): TDEM**

SLA Key Area 3: Custom Programming Requests

KEC will provide custom programming to enhance, modify, and upgrade the system as requested by TDEM. Examples of enhancements, modifications and upgrades include, but are not limited to:

- Changes in process flow
- Implementation of new forms, graphics, URLs or other content
- Revisions to forms, graphics, URLs or other content
- Addition of new functionality
- Enhancements or changes to existing functionality
- Database changes including addition of fields or modifications to existing fields

These requests are made outside of any existing or future design specified contracts. Such requests for modifications to the system shall be made via email, phone or in person by contacting the KEC program manager.

Service Description	Metric	Target	SP Role/Res.	SR Role/Res.	Comments
3.1 Standard Request	Acknowledgement within 16 business hours from request. Cost and timeline will be provided within 5 business days.	Request accomplished by specified project dates	√	√	If the scope of the request will require more than five business days to investigate, plan, or estimate, KEC will notify TDEM in writing of the revised timeline. TDEM will have the responsibility of approving all requested changes to PreparingTexas.org as well as approving the cost associated with the changes.

Custom programming requests will be billed at the hourly rate specified in the Contract and invoiced monthly.

**Attachment B – PreparingTexas.org System Service Level Agreement (SLA)
Service Provider (SP): Knowledge Engineering Center
Service Receiver (SR): TDEM**

3.2 Rush Request	Acknowledgement as soon as possible	Request accomplished by specified project dates	✓	✓	Timeline will be provided by TDEM and accepted by KEC. Rush charges will apply. TDEM will have the responsibility of approving all requested changes to PreparingTexas.org as well as approving the cost associated with the changes.
<p>TEEX may, at its discretion, accept a "Rush Request". Because of the impact these requests may have on both TDEM and TEEX customers, these requests will be charged at a higher hourly rate, and every effort will be made to complete the request as quickly as possible.</p> <p>Rush Requests should be emailed to kec.support@teex.tamu.edu as a high priority. Contact information is as follows:</p> <p align="center">Michael Greene, KEC Program Manager 979.458.6732 cell: 979.219.0737</p>					

Attachment B – PreparingTexas.org System Service Level Agreement (SLA)
Service Provider (SP): Knowledge Engineering Center
Service Receiver (SR): TDEM

SLA Key Area 4: Project Management

Work Item Tracking

In order to facilitate accurate logging and tracking of all technical support and service level requests, KEC will maintain documentation of all requests. Each request will be entered as a new case, with subsequent tasks developed and assigned to KEC staff as needed. Deadlines and priorities will be logged associated with each case and/or task.

Exceptions

This Agreement does not cover work items completed under a separate development or design contract between KEC and TDEM.

This Agreement does not cover Service Downtime outside of KEC's direct control caused by problems in the following:

- End users' local area network.
- End user Internet connectivity or software.
- Entities inside TEEEX's internal network including, but not limited to, firewall configuration and bandwidth shaping, local area workstations, or other servers, equipment, and software that have a potential bearing on the local networking environment.
- Any predetermined Scheduled Service Downtime.
- Any problems beyond the immediate TEEEX network segment.
 - Any interruptions, delays or failures caused by TDEM agents, or subcontractors, such as, but not limited to, the following:
 - Inaccurate configuration.
 - Non-compliant use of any software installed on the server.
 - End user initiated server over-utilization.
 - Any problems related to attacks on the machine such as hacking, bandwidth-based attacks of any nature, and service or operating system exploits.
 - Problems associated with Operating System, Software, or Applications.

Attachment B – PreparingTexas.org System Service Level Agreement (SLA)
Service Provider (SP): Knowledge Engineering Center
Service Receiver (SR): TDEM

Attachment B - Definitions

The following definitions apply to the attached MOA and Service Level Agreement. They are intended to provide clarity and facilitate communication and equal understanding between TDEM and KEC. Should further clarification be needed, please contact the KEC program coordinator.

- **Business Day** - a day that TEEX is regularly open for business.
- **Business Hour** - an hour between 8AM and 5PM that TEEX is regularly open for business.
- **Bug fixes** - Bugs occur when the system is not working as designed to the latest specifications. Corrections are made to the system to restore functionality of existing features. Bug fixes can result from coding errors or data insufficiencies, but do not constitute changes to the system requirements or additional/different functionality.
- **Metric** - a statistic or unit of measure to gauge the Service Level Requirement.
- **Roles and Responsibilities** - defines the roles and responsibilities of each party involved in the SLA.
- **Rush Request** - any request, other than urgent tech support, with a required delivery timeline of less than 5 business days or which KEC has no input into the delivery timeline.
- **Server Maintenance** - Patches, upgrades, back-ups or other maintenance of server hardware or software on which the system is hosted.
- **Service Description** - provides a description of the IT service area, the environment, service level objectives, service level requirements, and roles and responsibilities for the provision of IT products and services.
- **Service Provider (SP)** - the party providing/performing the IT services.
- **Service Receiver (SR)** - the party receiving the IT services.
- **Standard Request** - any request for custom programming to enhance, modify, and upgrade the system
- **Target** - the numeric value of a metric that is to be achieved for a service in the SLA.
- **Technical Support** - Responding to phone or email questions regarding how to use the system's features, and logging notifications of bugs in the system.
- **Urgent Technical Support** - A technical support request is considered urgent if the system is inaccessible to the end user as a result of coding errors, data insufficiencies or server problems.