

**THE TEXAS STATE UNIVERSITY SYSTEM
PURCHASE ORDER TERMS AND CONDITIONS**

THE BELOW TERMS AND CONDITIONS ARE INCORPORATED INTO ALL PURCHASE ORDERS – ACCEPTANCE OF THE PURCHASE ORDER INDICATES VENDOR AGREES TO THE BELOW TERMS AND CONDITIONS. THESE TERMS AND CONDITIONS GOVERN AND TAKE PRECEDENCE OVER ANY TERM AND CONDITION CONTAINED IN VENDOR’S QUOTE OR RESPONSE, OR ADDITIONAL DOCUMENTATION PROVIDED BY VENDOR. IF VENDOR IS PROVIDING INFORMATION RESOURCE SERVICES (PER TAC 202.1), THE TERMS AND CONDITIONS OF THE INFORMATION SECURITY & ACCESSIBILITY STANDARDS EXHIBIT ARE ALSO INCORPORATED INTO THE PURCHASE ORDER AND SHALL ALSO TAKE PRECEDENCE OVER ANY CONTRARY TERM AND CONDITION CONTAINED IN VENDOR’S QUOTE OR RESPONSE, OR ADDITIONAL DOCUMENTATION PROVIDED BY VENDOR.

1. DELIVERY

- a. If delay in delivery is foreseen, Vendor shall notify The Texas State University System (**The System**), Office of Finance at finance@tsus.edu or (512) 463-1808. The System may, in its sole discretion, extend the delivery date if The System determines the reasons are valid. Default in promised delivery (without acceptable reasons as determined by The System) or failure to meet specifications, authorizes The System to purchase supplies elsewhere and charge full increase in cost, if any, to defaulting vendor.
- b. No substitutions, cancellations or price changes are permitted without the prior written approval of The System’s Office of Finance.
- c. Delivery shall be made during normal business hours (Monday – Friday, 8:00 am – 5:00 pm) to the shipping address noted on the Purchase Order (the **Order**). Materials will be considered received by The System upon final acceptance by the requestor of the goods or services.
- d. **Title and Risk of Loss.** Title to and risk of loss to any goods to be delivered under the Order will not pass to The System until The System actually receives and takes possession of such goods at the point of delivery.

2. PAYMENT

- a. **Prompt Payment.** So long as Vendor has provided The System with its current and accurate Federal Tax Identification Number in writing and Vendor is not in default under the Order, The System will pay Vendor for goods and services in accordance with the Prompt Payment Provisions of Chapter 2251, [Texas Government Code](#). The System will incur no penalty for late payment, if payment is made in accordance with these Prompt Payment Provisions. The System will notify Vendor, in writing, of any error or disputed amount in an invoice submitted for payment not later than the 21st day after The System receives the invoice. Pursuant to Section 2251.042, [Texas Government Code](#), The System may withhold from payments required no more than 110 percent of the disputed amount.
- b. **Sales Tax.** As an agency of the State of Texas, The System is exempt from Texas Sales & Use Tax on goods and services in accordance with §151.309, [Texas Tax Code](#), and Title 34 [Texas Administrative Code](#) (TAC) §3.322. Pursuant to [34 TAC §3.322\(c\)\(5\)](#), The System is not required to provide a tax exemption certificate to establish its tax exempt status.

- c. **Electronic Funds Transfer.** Section 51.012, [Texas Education Code](#), authorizes The System to make payments through electronic funds transfer methods. Vendor agrees to receive payments from The System through electronic funds transfer methods, including the automated clearing house system (**ACH**). Vendor agrees to provide Vendor's banking information and taxpayer identification number to The System, in the format requested by The System, prior to the first payment. Changes to Vendor's information should be communicated to The System in the same manner at least thirty (30) days in advance of the effective date of the change.
- d. Vendor shall submit an itemized invoice showing the purchase order number to the bill-to address noted on the Order.
- e. **Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, [Texas Government Code](#), Vendor agrees that any payments owing to Vendor under this Order may be applied directly toward any debt or delinquency that Vendor owes the State of Texas or any agency of the State of Texas, regardless of when it arises, until such debt or delinquency is paid in full.

3. INSURANCE

In the event the Vendor, its employees, agents or subcontractors enter premises occupied by or under the control of The System in the performance of the Order, the Vendor must obtain and maintain the minimum insurance coverages set forth below. Vendor is not relieved of any liability or other obligations assumed or pursuant to the Order by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

- a. **Workers' Compensation Insurance** with statutory limits for the state of Texas, and Employer's Liability Insurance with limits of not less than:

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

Policies must include Other States Endorsement to include TEXAS if business is domiciled outside the State of Texas.

- b. **Commercial General Liability Insurance** with limits of not less than:

- Each Occurrence Limit - \$1,000,000
- Damage to Rented Premises - \$300,000
- Medical Expenses (any one person) - \$10,000
- Personal & Advertising Injury - \$1,000,000
- General Aggregate - \$2,000,000
- Products - Completed Operations Aggregate - \$2,000,000

Policy must include independent contractor's liability, covering, but not limited to, the liability assumed under the indemnification provision of this order, fully insuring Vendor's (or subcontractor's) liability for bodily injury (including death) and property damage.

- c. **Business Auto Liability Insurance** covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Combined Single Limit Bodily Injury and Property Damage.

- d. For Orders that involve the handling of hazardous material, or Vendor's operation may create or exasperate an environmental hazard, **Pollution Liability Insurance (including Pollution Liability Coverage)** with limits of not less than \$1,000,000 per loss and \$2,000,000 annual aggregate is required.
- e. For Orders with potential risks related to data privacy, network or information security, **Cyber Liability Insurance** with limits of not less than \$10,000,000 for each wrongful act is required. This policy must cover:
- Liability for network security failures or privacy breaches, including loss or unauthorized access, use or disclosure of The System's data, whether by Vendor or any of subcontractor or cloud service provider used by Vendor;
 - Costs associated with a privacy breach, including notification of affected individuals, customer support, forensics, crises management / public relations consulting, legal services of a privacy attorney, credit monitoring and identity fraud resolution services for affected individuals;
 - Expenses related to regulatory compliance, government investigations, fines, fees assessments and penalties;
 - Liability for technological products and services;
 - PCI fines, fees, penalties and assessments;
 - Cyber extortion payment and response costs;
 - First and Third-Party Business Interruption Loss resulting from a network security failure;
 - Liability for technological products and services;
 - Costs of restoring, updating or replacing data; and
 - Liability losses connected to network security, privacy, and media liability.
- f. **Additional Insurance Requirements.**
- Insurance must be placed with insurers duly licensed or authorized to do business in the state of Texas and with an "A.M. Best" rating of not less than A- VII.
 - Before the commencement of any work, Vendor must furnish to The System's Risk Manager an original, latest edition Certificate of Insurance written on a standard ACORD form acceptable to The System, evidencing that it has procured the insurance required herein. The System reserves the right to require Vendor to provide updated certificates of insurance, declaration pages, and/or endorsements evidencing the terms and conditions required herein at any time. Vendor must replace all such certificates with new ones within 10 days of expiration. Each insurance policy required by this Order must be in effect at or prior to commencement of work under this Order and remain in effect for the duration of the project.
 - With the exception of Workers' Compensation and Employer's Liability and Professional Liability, The System, its officers, employees, agents, and volunteers must be included as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Vendor. Commercial General Liability must include The System and its officers, employees, agents, and volunteers as additional insureds for both on-going and completed operations.
 - All policies must be endorsed to provide a waiver of subrogation in favor of The System.

- All policies of insurance must be endorsed to be primary and non-contributory with any insurance coverages and/or self-insurance maintained by The System.
- All insurance policies must provide for written notice of cancellation to be sent to The System in accordance with policy provisions. In the event of notice of cancellation of or material change in any insurance required herein, within two (2) days upon receiving such notice, Vendor shall provide written notice to The System.
- Vendor must require and verify that any and all subcontractors which are not protected under Vendor's own insurance policies maintain insurance of the same nature and in the same amounts as required of Vendor in this Order.

4. TERMINATION

- Termination for Convenience.** Upon written notice to the Vendor, The System may terminate the Order, in whole or in part, whenever The System determines that such termination is in the best interest of The System. The System shall pay all reasonable costs incurred up to the date of termination and all reasonable costs associated with termination of the Order. However, the Vendor shall not be reimbursed for anticipatory profits.
- Termination for Default.** When the Vendor has not performed or has unsatisfactorily performed the Order, payment shall be withheld at the discretion of The System. Failure on the part of a Vendor to fulfill contractual obligations shall be considered just cause for termination of the Order and the Vendor is not entitled to recover any costs incurred by the Vendor up to the date of termination.
- Termination for Loss of Funding.** Performance by The System under the Order may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the **Legislature**) and/or allocation of funds by the Board of Regents of The Texas State University System (the **Board**). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then The System will issue written notice to Vendor and The System may terminate the Order without further duty or obligation hereunder. Vendor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of The System.

5. WARRANTIES AND CERTIFICATIONS

- Representations and Warranties by Vendor.** If Vendor is a corporation or a limited liability company, Vendor 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.
- Tax Certification.** If Vendor is a taxable entity as defined by Chapter 171, [Texas Tax Code \(Chapter 171\)](#), then Vendor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Vendor is exempt from the payment of those taxes, or that Vendor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
- Eligibility Certifications.** Pursuant to Sections 2155.004 and 2155.006, [Texas Government Code](#), Vendor certifies that the individual or business entity named in the Order is not ineligible to

receive the award of or payments under the Order and acknowledges that the Order may be terminated and payment withheld if these certifications are inaccurate.

- d. **Texas Family Code Child Support Certification.** Pursuant to Section 231.006, [Texas Family Code](#), Vendor certifies that it is not ineligible to receive the award of or payments under the Order and acknowledges that the Order shall be terminated, and payment shall be withheld if this certification is inaccurate.
- e. **Access by Individuals with Disabilities.** Vendor represents and warrants (the **EIR Accessibility Warranty**) that the electronic and information resources and all associated information, documentation, and support that it provides to The System under the Order (collectively, the **EIRs**) comply with the applicable requirements set forth in Title 1, Chapter 213 of the [Texas Administrative Code](#) and Title 1, Chapter 206, Rule §206.70 of the [Texas Administrative Code](#) (as authorized by Chapter 2054, Subchapter M of the [Texas Government Code](#).) To the extent Vendor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Vendor represents and warrants that it will, at no cost to The System, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event that Vendor fails or is unable to do so, then The System may terminate the Order and Vendor will refund to The System all amounts The System has paid under the Order within thirty (30) days after the termination date.
- f. **Debarment and Suspension.** Pursuant to and in compliance with Executive Orders 12549 and 12689 and Section 180.300 of the Code of Federal Regulations, The System cannot purchase goods and/or secure services from vendors that have been debarred, suspended, proposed for debarment, or otherwise excluded from or ineligible to participate in Federal or State assistance programs or activities. By accepting The System's Order, Vendor is certifying that, to the best of its knowledge, Vendor and/or its Principals are not suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts by the Federal government and/or the State of Texas. Vendor further certifies that it is not subject to a vendor hold by the State of Texas and/or that it is not subject to debarment or suspension by the Texas Comptroller. If it is ever determined that Vendor is suspended or debarred from doing business with the State of Texas or U.S. Federal government, The System may immediately terminate the Order and will not issue any payment for goods / services rendered.
- g. **Entities that Boycott Israel.** Pursuant to Section 2270.002 of the [Texas Government Code](#), Vendor certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this order. Vendor shall state any facts that make it exempt from the boycott certification.
- h. **Firearm Entities and Trade Associations Discrimination.** Pursuant to Chapter 2274 of the [Texas Government Code](#), for Orders that exceed \$100,000, Vendor certifies that it:
 - (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
 - (2) will not discriminate during the term of the Order against a firearm entity or firearm trade association.

- i. **Energy Company Boycotts.** Pursuant to Chapter 2274 of the [Texas Government Code](#), for Orders that exceed \$100,000, Vendor certifies that it:
 - (1) does not boycott energy companies as defined in Section 809.001 (1)(A) [Texas Government Code](#) (i.e., fossil fuel companies); and
 - (2) will not boycott energy companies during the term of the Order.
- j. **Vaccine Passport Prohibition.** Vendor certifies that it does not require its customers to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the Vendor's business. Vendor acknowledges that such a vaccine or recovery requirement would make Vendor ineligible for a state-funded contract.
- k. **Critical Infrastructure Affirmation.** Pursuant to Section 2274.0102 of [Texas Government Code](#), Vendor certifies that neither it nor its parent company, nor any affiliate of Vendor or its parent company, is:
 - (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Section 2274.0103 of [Texas Government Code](#), or
 - (2) headquartered in any of those countries.
- l. **Foreign Terrorist Organizations.** Pursuant to Chapter 2252.152 of the [Texas Government Code](#), Vendor certifies Vendor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges the Order may be terminated and payment withheld if this certification is inaccurate.
- m. **Ethics Matters; No Financial Interest.** Vendor and its employees, agents, representatives and subcontractors have read and understand The System's Conflicts of Interest Policy and Code of Ethics at <https://www.tsus.edu/about-tsus/policies.html> and applicable state ethics laws and rules, including Senate Bill 20 (84th Texas Legislature, 2015). Neither Vendor nor its employees, agents, representatives or subcontractors will assist or cause The System employees to violate The System's Conflicts of Interest Policy, the System's Ethics Code, or applicable state ethics laws or rules. Vendor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Order.

Further, if this Order requires TSUS Board of Regents Approval prior to issuance or has a value of at least \$1,000,000, Vendor agrees to comply with §2252.908, [Texas Government Code \(Disclosure of Interested Parties Statute\)](#), and 1 TAC §§46.1 through 46.5 (Disclosure of Interested Parties Regulations), as implemented by the Texas Ethics Commission (TEC), including, among other things, providing the TEC and The System with information required on the form promulgated by TEC. Vendor may learn more about these disclosure requirements, including the use of TEC's electronic filing system, by reviewing the information on TEC's website at <https://www.ethics.state.tx.us/filinginfo/1295/>.

6. AUDIT

- a. **Right to Audit.** Vendor agrees that The System, or any of its duly authorized representatives, at any time during the term of this Order, will have access to, and the right to audit and examine, any pertinent books, documents, papers, and records of Vendor (such as sales receipts, salary lists, itemized expenses and disbursements, time reports, equipment charges, overtime reports, etc.), and related Vendor's charges incurred in its performance under this Order. Such records will be kept by Vendor for a period of four years after Final Payment under this Order. Vendor agrees to refund The System within thirty days of being notified by The System of any overpayments disclosed by any audits.
- b. **State Auditor's Right to Audit.** Vendor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the State of Texas Auditor's Office or any successor agency (**Auditor**), to conduct an audit or investigation in connection with those funds. Vendor shall cooperate with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Vendor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of the Vendor relating to this contract for any purpose.

7. NOTICES

Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Order will be in writing and will be sent via certified mail, hand delivery, overnight courier, or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mail, when deposited, with correct postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, or email (to the extent an email address is set forth below), when received:

If to The System: The Texas State University System
 Attention: Vice Chancellor & CFO
 601 Colorado Street
 Austin, TX 78701

Or via email: finance@tsus.edu

If to Vendor: As per address / email information noted on the Order.

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

8. INDEMNIFICATION

VENDOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY THE SYSTEM, AND HOLD HARMLESS THE SYSTEM AND THEIR REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS,

JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS ORDER, TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF VENDOR, OR IT AGENTS, EMPLOYEES, SUBVENDORS, SUPPLIERS OR ANYONE DIRECTLY EMPLOYED BY VENDOR OR ANYONE FOR WHOSE ACTS VENDOR MAY BE LIABLE. THE FOREGOING SHALL NOT APPLY IF DUE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNITEES. IN ADDITION, VENDOR WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY THE SYSTEM, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS ORDER. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT, WHICH ANY INDEMNITEE HAS, BY LAW OR EQUITY. IN THE EVENT OF LITIGATION, THE SYSTEM AGREES TO COOPERATE REASONABLY WITH VENDOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

9. LIMITATIONS

THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF THE SYSTEM (A STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS OF THE ORDER, INCLUDING, BUT NOT LIMITED TO, THOSE TERMS AND CONDITIONS RELATING TO LIENS ON THE SYSTEM'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"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON THE SYSTEM EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

10. SOVEREIGN IMMUNITY

Notwithstanding any provision of this Order, nothing herein shall be construed as a waiver by The Texas State University System of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in this Order, the terms of this paragraph shall control.

11. CYBERSECURITY TRAINING PROGRAM

Pursuant to Section 2054.5192, [Texas Government Code](#), Vendor and its subcontractors, officers, and employees, who are provided credentials granting access to The System's computer system also known as The System's information system, must complete a cybersecurity training program certified under Section 2054.519, [Texas Government Code](#) as selected by The System. The cybersecurity training program must be completed during the term and any renewal period of this Order. Vendor shall verify in writing completion of the program to The System within the first thirty (30) calendar days of the term and any renewal period of this Order. Failure to comply with the requirements of this section are grounds for termination for cause of this Order.

12. BACKGROUND CHECKS

Vendor will provide representation that it has conducted the following background checks on its officers, employees, or other persons it causes to be on The System campuses:

- Sex offender and criminal history databases where the above individuals will be placed on the campus, working with or around students;
- Criminal history and credit history background checks where the above individuals will be handling money, informational technology, or other security-sensitive areas as determined by The System;
- Vendor will determine on a case-by-case basis whether each individual assigned to perform services under this Order is qualified to provide the services. Vendor will not knowingly assign any individual to provide services on The System campuses who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.

Vendor will provide The System a letter signed by an authorized representative of Vendor certifying compliance with this Section. Vendor will provide The System an updated certification letters each time there is a change in the individuals assigned to perform services under this Order.

13. GENERAL

- Products and Materials Produced in Texas.** If Vendor will provide services under the Order, Vendor covenants and agrees that in accordance with Section 2155.4441, [Texas Government Code](#), in performing its duties and obligations under the Order, Vendor will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
- Buy American Iron and Steel.** For Orders in which iron or steel products will be used, Vendor agrees to comply with Section 2252.202, [Texas Government Code](#), requiring any iron or steel products produced through a manufacturing process and used in the project be produced in the United States.
- Independent Contractor** – Vendor recognizes that it is engaged as an independent contractor and acknowledges that The System has no responsibility to provide transportation, insurance, vacation or other fringe benefits normally associated with employee status. Vendor, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with that status, that it will neither hold itself out as, nor claim to be an officer, partner, employee or agent of The System, and that it will not make any claim, demand or application to or for any right or privilege applicable to an officer, representative, employee or agent of The System, including unemployment insurance benefits, social security coverage or retirement benefits. Vendor agrees to make its own arrangements for any fringe benefits as it may desire and agrees that it is responsible for all income taxes required by Applicable Laws. All of Vendor's employees providing services to The System will be deemed employees solely of Vendor and will not be deemed for any purposes whatsoever employees, agents or borrowed servants of, acting for or on behalf of, The System. No acts performed or representations, whether oral or written, made by Vendor with respect to third parties will be binding upon The System.

- d. **Work Material.** All drawings, specifications, plans, computations, data, photographs, records, models, statements, reports, and other deliverables or materials prepared or produced by Vendor Parties in connection with the Services (**Work Material**), whether or not accepted or rejected by The System, are the property of The System and for The System's exclusive use and re-use at any time without further compensation and without any restriction. Vendor grants and assigns to The System all rights in and claims to the Work Material and will cooperate with The System in obtaining or enforcing The System's rights and claims. Vendor will not use the Work Material except as expressly authorized by this Order. Vendor will not apply for any copyright, patent or other property right related to the Work Material.
- e. **Public Information.** The System strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act, Chapter 552, [Texas Government Code](#). Vendor is required to make any information created or exchanged with the state pursuant to this Order, that is not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. The following format(s) shall be deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format.
- f. **Records Retention Requirements for Orders Over One Million.** For each Order that exceeds a total value of one million dollars, and in accordance with Section 552.372 of the [Texas Government Code](#), Vendor agrees to:
- (1) preserve all contracting information (as this term is defined in [Texas Government Code](#), Section 552.003 (7)) related to this Order in accordance with the records retention requirements applicable to the System for the duration of this contract;
 - (2) promptly provide to the System any contracting information related to this Order that is in the custody or possession of Vendor on request of the System; and
 - (3) on completion of this Order, either: (A) provide at no cost to the System all contracting information related to this Order that is in the custody or possession of Vendor, or (B) preserve the contracting information related to this Order in accordance with the records retention requirements applicable to the System.

Vendor further agrees that the requirements of Subchapter J, Chapter 552, [Texas Government Code](#), may apply to this Order and Vendor agrees that this Order can be terminated if the Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

- g. **Travel Expenses.** If The System specifies in writing that travel is a part of the services under this Order, The System will reimburse, without mark-up, reasonable expenses for travel (including meals, rental car or mileage, coach class airfare, and lodging) validly incurred by Vendor directly and solely in support of this Order and approved by The System. Travel will be limited to amounts authorized under The System's travel policy. A copy of the travel policy will be provided to Vendor upon request. In the event travel expenses are paid by appropriated funds, travel expenses are limited to amounts authorized by the Comptroller of Public Accounts for the State of Texas for state employees (<https://fmx.cpa.state.tx.us/fm/travel/travelrates.php>). Vendor will not be reimbursed by The System for expenses that are prohibited or that exceed the allowable amounts provided in the then current Travel Reimbursement Rates. As a condition precedent to receiving reimbursement for expenses, Vendor may be required to submit receipts, invoices, and other documentation requested by The System.

The System reserves the right to pay the then-current per diem rate established under their policy to cover travel expenses in lieu of Vendor submitting receipts and other associated documentation for expenses.

The System reserves the right to negotiate lump sum payments to cover estimated travel expenses in lieu of reimbursing actual travel expenses. In such cases, the payments will be paid to Vendor and reported to Vendor as reportable compensation.

- h. **Breach of Contract Claims.** To the extent that Chapter 2260, [Texas Government Code](#), is applicable to the Order and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by The System and Vendor to attempt to resolve any claim for breach of contract made by Vendor that cannot be resolved in the ordinary course of business. The chief business officer of The System will examine Vendor's claim and any counterclaim and negotiate with Vendor in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Order by The System nor any other conduct, action or inaction of any representative of The System relating to the Order constitutes or is intended to constitute a waiver of The System's or the state's sovereign immunity to suit; and (ii) The System has not waived its right to seek redress in the courts.
- i. **Nondiscrimination.** In their execution of the Order the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. The parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of the Order.
- j. **Press Releases and Use of The System Name.** Except when defined as part of the services provided under the Order, Vendor will not make any press releases, public statements, or advertisement referring to the services provided or the engagement of Vendor as an independent Vendor of The System in connection with the Order or release any information relative to the Order or services provided under the Order for publication, advertisement or any other purpose without the prior written approval of The System.
- k. **External Terms.** The Order completely supplants, replaces, and overrides all other terms and conditions or agreements, written or oral, concerning Vendor's performance or provision of goods or services under this Order (**External Terms**). The External Terms are null and void and will have no effect under this Order, regardless of whether The System or its employees, Vendors, or agents express assent or agreement to the External Terms. The External Terms include any shrink wrap, clickwrap, browse wrap, web-based terms and conditions of use, and any other terms and conditions displayed in any format that The System or its employees, Vendors, or agents are required to accept or agree to before or in the course of accessing or using any goods or services provided by Vendor.
- l. **Venue; Governing Law.** The Order and all claims arising from the Order shall be interpreted and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Any judicial action or proceeding between the parties relating to the Order and all claims arising from the Order shall be brought in the federal or state courts serving Travis County in the State of Texas.

- m. **Terms Controlling.** In the event there is a conflict between the terms and conditions of Vendor's quote, or any other documents associated with the Order, and these terms and conditions, these terms and conditions will control.

In accordance with [Texas Education Code](#), Section 51.9335 (h), any Contract for the acquisition of goods and services to which an institution of higher education is a party, any provision required by applicable law to be included in the Agreement or Contract is considered to be a part of the Agreement or Contract without regard to:

- (1) Whether the provision appears on the face of the Agreement or Contract; or
- (2) Whether the Agreement or Contract includes any provision to the contrary.