PURCHASE ORDER TERMS AND CONDITIONS

The terms and conditions below are incorporated into all purchase orders. Acceptance of this purchase order ("**Order**," "**Contract**", or "**Agreement**") indicates Seller's ("**Seller**," "**Vendor**", or "**Contractor**") acceptance of the below terms and conditions. The below terms and conditions govern and take precedence over any term or condition contained in Seller's quote or response, or additional documentation provided by Seller. If Seller is providing information resource services per Texas Administrative Code ("**TAC**"), §202.1, the terms and conditions of the Information Security & Accessibility Standards Exhibit are also incorporated into the Order and shall also take precedence over any contrary term or condition contained in Seller's quote or response, or additional documentation provided by Seller.

1. Rules, Regulations, and Statutes

Texas State University ("**TXST**" or "**University**") is an agency and institution of higher education authorized under the laws of the State of Texas, and a member institution of The Texas State University System ("**TSUS**"). All purchases must comply with the rules, regulations, and statutes of the State of Texas, TSUS System Rules and Regulations, TXST policies, and the Purchase Order Terms and Conditions.

2. Delivery

a. **Shipping Terms.** FOB Destination Freight Prepaid unless delivery terms are specified otherwise in quote; TXST agrees to reimburse Seller for transportation costs in the amount specified in Seller's quote, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided TXST shall have the right to designate what method of transportation shall be used to ship the goods.

b. **Packaging.** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (1) Seller's name and address; (2) Consignee's name, address, and Order or purchase release number and the supply agreement number if applicable; (3) Container number and total number of containers, e.g. box 1 of 4 boxes; (4) The number of the container bearing the packing slip. The Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure the lowest transportation costs and to conform with the requirements of common carriers and any applicable specifications. TXST's count of weight shall be final and conclusive on shipments not accompanied by packing list.

c. **Delays.** If delay in delivery is foreseen, Vendor shall notify TXST's Procurement Department at purchasing@txstate.edu or (512) 245-2521. TXST may, in its sole discretion, extend the delivery date if TXST determines the reasons are valid. Default in promised delivery (without acceptable reasons as determined by TXST) or failure to meet specifications, authorizes TXST to purchase supplies elsewhere and charge full increase in cost, if any, to defaulting vendor.

d. Substitutions, cancellations or price changes are not permitted without the prior written approval of TXST's Procurement Department.

e. Delivery shall be made during normal business hours (Monday – Friday, 8:00 am – 5:00 pm CT) to the shipping address noted on the Order. Materials will be considered received by TXST upon final acceptance by the requestor of the goods or services.

f. **International Orders.** Seller shall be responsible for paying for all import duties or tariffs for international orders. Seller shall invoice TXST accordingly for reimbursement of such amounts.

g. **Title and Risk of Loss.** Title to and risk of loss to any goods to be delivered under the Order will not pass to TXST until TXST receives and takes possession of such goods at the point of delivery.

3. Invoices and Payments

a. **Invoices.** Vendor shall submit an itemized invoice showing the purchase order number to the bill-to address noted on the Order.

b. **Prompt Payment.** So long as Vendor has provided TXST with its current and accurate Federal Tax Identification Number and Vendor is not in default under the Order, TXST will pay Vendor for goods and services in accordance with the Prompt Payment Provisions of Chapter 2251, Texas Government Code. TXST will incur no penalty for late payment, if payment is made in accordance with these Prompt Payment Provisions. TXST will notify Vendor, in writing, of any error or disputed amount in an invoice submitted for payment not later than the 21st day after TXST receives the invoice. Pursuant to Section 2251.042, Texas Government Code, TXST may withhold from payments required no more than 110 percent of the disputed amount.

c. **Sales Tax.** As an agency of the State of Texas, TXST is exempt from Texas Sales & Use Tax on goods and services in accordance with §151.309, Texas Tax Code, and 34 TAC §3.322. Pursuant to 34 TAC §3.322(c)(5), TXST is not required to provide a tax exemption certificate to establish its tax-exempt status.

d. **Electronic Funds Transfer.** Section 51.012, Texas Education Code, authorizes TXST to make payments through electronic funds transfer methods. Vendor agrees to receive payments from TXST 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 TXST, in the format requested by TXST, prior to the first payment. Changes to Vendor's information should be communicated to TXST in the same manner at least thirty (30) days in advance of the effective date of the change.

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.

4. Insurance

In the event the Vendor, its employees, agents or subcontractors enter premises occupied by or under the control of TXST 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 TXST'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 TXST's Risk Manager an original, latest edition Certificate of Insurance written on a standard ACORD form acceptable to TXST, evidencing that it has procured the insurance required herein. TXST 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, TXST, 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 TXST 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 TXST.
   - All policies of insurance must be endorsed to be primary and non-contributory with any insurance coverage and/or self-insurance maintained by TXST.
   - All insurance policies must provide for a written notice of cancellation to be sent to TXST 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 TXST.

- Vendor must require and verify that 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.

5. Termination

a. Termination for Convenience. Upon written notice to the Vendor, TXST may terminate the Order, in whole or in part, whenever TXST determines that such termination is in the best interest of TXST. TXST 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.

b. Termination for Default. When the Vendor has not performed or has unsatisfactorily performed the Order, payment shall be withheld at the discretion of TXST. 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.

c. Termination for Insolvency. TXST may terminate this Order immediately with no further notice if Contractor: (1) petitions for reorganization under the Bankruptcy Code or is adjudged bankrupt; (2) becomes insolvent; or (3) makes a general assignment or sale of Contractor's assets or business for the benefit of creditors.

d. Termination for Loss of Funding. Performance by TXST 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 TXST will issue written notice to Vendor and TXST may terminate the Order without further duty or obligation hereunder. Vendor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of TXST.

6. Warranties and Certifications

a. **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.

b. **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.

c. **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 TXST 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 TXST, 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 TXST may terminate the Order and Vendor will refund to TXST all amounts TXST 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, TXST 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 TXST'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, TXST may immediately terminate the Order and will not issue any payment for goods / services rendered.

g. **Entities that Boycott Israel.** Pursuant to Section 2271.002 of the Texas Government Code, Vendor certifies that either (1) it meets an exemption criterion under Section 2271.002; or (2) 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.** Pursuant to Executive Order GA-32, 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, Contractor certifies that neither it nor its parent company, nor any affiliate of Contractor 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. **Hardening of Texas's Critical Infrastructure.** Pursuant to Executive Order GA-48 (2024), Vendor certifies that it, and, if applicable, any of its holding companies or subsidiaries, is not:
   (1) Listed in Section 889 of the 2019 National Defense Authorization Act (**NDAA**); or
   (2) Listed in Section 1260H of the 2021 NDAA; or
   (3) Owned by the government of a country listed on US Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4; or
   (4) Controlled by any governing or regulatory body located in a country on the US Department of Commerce's foreign adversaries list under 15 C.F.R. Section 791.4.

m. **Foreign Terrorist Organizations.** Pursuant to Section 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.

n. **Ethics Matters; No Financial Interest.** Vendor and its employees, agents, representatives and subcontractors have read and understand TXST's Conflicts of Interest Policy and Code of Ethics, as published in the TSUS Rules and Regulations 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 TXST employees to violate TXST's Conflicts of Interest Policy, TXST'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.

o. **Disclosure of Interested Parties.** 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 TXST 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/.

7. Audit

a. **Right to Audit.** Vendor agrees that TXST, 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 TXST within thirty days of being notified by TXST of any overpayments disclosed by any audits.

b. **State Auditor's Right to Audit.** Contractor 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. Contractor shall cooperate with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor 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 Contractor relating to this Contract for any purpose.

8. 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 (1) if delivered by certified mail, when deposited, with correct postage prepaid, in the United States mail, or (2) if delivered by hand, overnight courier, or email (to the extent an email address is set forth below), when received:

If to TXST: Texas State University
University Procurement Services
601 University Dr.
San Marcos, Texas 78666
Or via email:purchasing@txstate.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.

9. Indemnification

VENDOR WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY TXST, AND HOLD HARMLESS TXST 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 TXST, 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, TXST AGREES TO COOPERATE REASONABLY WITH VENDOR. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

10. LIMITATIONS

THE PARTIES ARE AWARE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF TXST (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 TXST'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 TXST EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.

11. Sovereign Immunity

Notwithstanding any provision of this Order, nothing herein shall be construed as a waiver by TXST of its constitutional, statutory or common law rights, privileges, immunities, or defenses including, but not limited to, waiver of TXST (i) sovereign immunity to suit; (ii) sovereign immunity against the recovery of money damages; or (iii) right to a jury trial for any issue arising under this Agreement. To the extent the terms of this paragraph conflicts with any other provision in this Order, the terms of this paragraph shall control.

12. Cybersecurity Training Program

Pursuant to Section 2054.5192, Texas Government Code, Vendor and its subcontractors, officers, and employees, who are provided with credentials granting access to TXST's computer system also known as TXST's information system, must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code as selected by TXST. 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 TXST 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.

13. 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 TXST 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 TXST;
- 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 TXST campuses who have a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.

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

14. General

a. **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.

b. **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.

c. **Independent Contractor.** Vendor recognizes that it is engaged as an independent contractor and acknowledges that TXST 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 TXST, 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 TXST, 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 TXST will be deemed employees solely of Vendor and will not be deemed TXST employees for any purpose whatsoever, agents or borrowed servants of, acting for or on behalf of, TXST. No acts performed or representations, whether oral or written, made by Vendor with respect to third parties will be binding upon TXST.

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 TXST, are the property of TXST and for TXST's exclusive use and re-use at any time without further compensation and without any restriction. Vendor grants and assigns TXST all rights in and claims to the Work Material and will cooperate with TXST in obtaining or enforcing TXST'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 rights related to the Work Material. If for any reason the Work would not be considered a work made for hire under applicable law, Vendor does hereby sell, assign, and transfer to TXST, its successors and assigns, the entire right, title and interest in and to the copyright in the Work, and in and to all works based upon, derived from, or incorporating

the Work, and in and to all rights corresponding to the foregoing throughout the world.

e. **Public Information.** TXST 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 TXST for the duration of this contract;
   (2) promptly provide TXST with any contracting information related to this Order that is in the custody or possession of Vendor on request of TXST; and
   (3) on completion of this Order, either: (A)provide at no cost to TXST 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 TXST.

   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 TXST specifies in writing that travel is a part of the services under this Order, TXST 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 TXST. Travel will be limited to amounts authorized under TXST'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.texas.gov/fmx/travel/textravel/rates/current.php). Vendor will not be reimbursed by TXST 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 TXST.

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

   TXST 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. **Dispute Resolution.** 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 TXST 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 TXST will examine Vendor's claim and any counterclaim and negotiate with Vendor in an effort to resolve such claims. The parties specifically agree that (1) neither the execution of the Order by TXST nor any other conduct, action or inaction of any representative of TXST relating to the Order constitutes or is intended to constitute a waiver of TXST's or the state's sovereign immunity to suit; and (2) TXST 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 based on race, color, national origin, age, sex, religion, disability, or veterans' status. Any breach of this covenant may result in termination of the Order.

j. **Press Releases and Use of TXST 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 TXST 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 TXST.

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 TXST or its employees, Vendors, or agents express an 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 TXST 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 Hays County in the State of Texas.

m. **Force Majeure.** Except as otherwise provided, neither Seller nor TXST shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this Order caused by Force Majeure. Incidents of Force Majeure include but are not limited to the following: acts of God, strikes, epidemics and pandemics, war, riots, flood, fire, sabotage, or any other circumstances of like character. 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 removed, provided the non-performing party exercises all reasonable due diligence to perform.

n. **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.

o. **Assignment and Subcontractors.** Contractor's interest in this Agreement (including Contractor's duties and obligations under this Agreement, and the fees due to Contractor under this Agreement) may not be subcontracted, assigned, delegated, or otherwise transferred to a third party, in whole or in part, without prior consent of the University, and any attempt to do so will (1) not be binding on the University; and (2) be a breach of this Agreement for which Contractor will be subject to all remedial actions provided by Applicable Laws, including Chapter 2161, Texas Government Code, and 34 TAC §§20.285(g)(5), 20.585 and 20.586. The benefits and burdens of this Agreement are assignable by the University.

p. **Contracting with Institutions of Higher Education.** 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.