STATE OF TEXAS
PURCHASE ORDER

1. Agency Name & No. **TEXAS STATE LIBRARY & ARCHIVES COMMISSION** 306 Tax Exempt agency of the Texas State Government	**4. Purchase Order No.** 306-16-8467	**12. HUB:** N/A	**13. Order Type:** Service
	5. PCC	**14. Vendor Identification No:** [redacted]	
2. Agency Billing Address **ACCOUNTING DEPARTMENT** Texas State Library & Archives Commission PO Box 12516 Austin, TX 78711-2516 Email invoices to: AP@tsl.texas.gov Phone: (512) 463-5473; Fax: (512) 475-0185	**6. Current Document No.** DT-9 **7. Document (order) amt** $64,800.00	**15. Vendor Address:** ProQuest L L C 789 E. Eisenhower Pkwy Anne Arbor, MI 48108	
*VENDOR MUST REFERENCE PURCHASE ORDER NUMBER ON ALL INVOICES OR INVOICE WILL BE RETURNED TO VENDOR. THIS PURCHASE HAS BEEN DETERMINED TO BE THE "BEST VALUE."	**8. REF DOC**	**16. Vendor Contact Info:** Cathleen May **Phone:** (734) 225-4574 **Fax:** **Email:** Cathleen.May@proquest.com	
3. Destination of goods or service ***FOB Destination*** ***Receiving Hours: 7:30 AM - 4:00 PM*** Receiving Dock, Room G-007 Texas State Library & Archives Commission 1201 Brazos Street Austin, TX 78701	**9. Service Period or Expected Delivery Date:** 6/15/2016 - 6/14/2017		
	10. Agency Contact: Pam Rodriguez **Email:** prodriguez@tsl.texas.gov	**Phone:** (512) 463-3037 **Fax:** (512) 475-3393	
	11. TSLAC Project Contact: Ann Griffith **Email:** agriffith@tsl.texas.gov	**Phone:** (512) 463-6110	

17. Description

SIRS Discoverer Online Subscription for the TexQuest Program. These services were secured with Contract # 306-16-8462. Services were solicitated from RFO # 306-16-8175B. Please refer to the contract for the terms and conditions for the services provided with this online subscription.

This online subscription currently is eligible for the DIR Blanket Exemption.
Publication - Subscription Services Exemptions through 08/31/2016: Electronic Publications, Database or Library Subscription service not offered under any current DIR contract for class code 715-35, 915-51, 956-35, 920-02,920-03 or 920-46.

18. SFX	INDEX	AY	COBJ	AOBJ	AMOUNT	INVOICE NO.
001	17931	16	7276	7103	$64,800.00	

19. Line No	20. Goods & Service	21. NIGP Code	22. Qty	23. Units	24. Unit Price	25. Extended Amt
1.	SIRS Discoverer Online Subscription for the TexQuest Program for the period of 6/15/2016 - 6/14/2017	956-35	1	Year(s)	$64,800.00	$64,800.00

INTERNAL PO ONLY **Grand Total** $64,800.00

26. Legal Cites: Texas Government Code 441.229 (a) - Group Purchasing Agreements that offer the most cost-effective method or purchasing library materials or services for the library consortium

27. Division Tracking Number: LDN 16-173

Per Texas Tax Code 151.309, the Texas State Library and Archives Commission is a tax-exempt agency.
If you need further proof of this, please contact the Agency Contact in box #10.

Confirmation of receipt is required, please sign box #29 and return signed PO via email: purchasing@tsl.texas.gov or fax: (512) 475-3393.

28. Approval Signature	Date	29. Vendor Signature	Date
P Rodriguez, CTP	4/25/2016		

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION
Contract for Services
Contract # 306-16-8467

This Contract is entered into by and between the Texas State Library and Archives Commission (TSLAC), an agency of the State of Texas, and ProQuest, LLC, pursuant to the authority contracted and in compliance with the provisions of the Texas Government Code Chapter 441 and Texas Government Code 2155.136 (1)(B).

I. CONTRACTING PARTIES

The Receiving Agency: **Texas State Library and Archives Commission** (TSLAC)
Ann Griffith will serve as Contract Manager and primary contact for the TexQuest Program. TSLAC may reassign Project Managers' responsibilities at its sole discretion. TSLAC will notify Performing Vendor within 24 hours of making any reassignments.

The Performing Vendor: **ProQuest, LLC,** a company located at 789 E. Eisenhower Parkway, Ann Arbor, MI 48108. Cathleen May will service as the point of contact for this Contract. The Vendor will notify TSLAC within 24 hours of making any reassignments.

II. STATEMENT OF SERVICES TO BE PROVIDED

ProQuest, LLC will provide annual online subscription to the SIRS Discoverer resource to the TexQuest Program. Services performed will be per the specifications outlined in Request for Offer (RFO) # 306-16-8176B (Attachment A), the Vendor's response (Attachment B), the Vendor's Best and Final Offer (Appendix A), and the additional requirements outlined in this Contract.

In the events of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the following order of priority: Signed TSLAC Contract, TSLAC Terms and Conditions, Attachments to the Contract, the Solicitation, and Vendor's Response to the Solicitation.

III. CONTRACT AMOUNT

The total amount for the contract term shall not exceed $64,800.00 without prior approval from the TSLAC Purchasing Department.

Annual renewals are limited to the amounts listed below per the Best and Final Offer provided by ProQuest, LLC, Inc. in Appendix A of this Contract.

STEAM Content	**Individual Resource Pricing**			
	1st Year	**2nd Year**	**3rd Year**	**Beyond**
SIRS Discoverer	$64,800	$66,096	$67,418	2% annual increase for additional renewals

IV. CONTRACT TERM

This Contract will become effective upon receipt of the fully executed Contract. The Contract period is during the period of June 15, 2016 through June 14, 2017, unless otherwise terminated earlier by either party. This contract can be renewed up to four (4) one-year renewal terms after the initial contract. Contract cannot be extended beyond June 14, 2021.

The Contracting Parties may terminate this Contract by giving written notice at least thirty (30) days prior to the effective dates of such termination.

An Awarded Vendor that cancels an offer under this Contract after TSLAC awards a contract will require the Awarded Vendor to pay liquidated damages to TSLAC in an amount equal to the difference between the Awarded Vendor's offer and the next best offer.

Contracts awarded by TSLAC shall be governed by and construed in accordance with the laws of the State of Texas. The federal or state courts of the United State located in Texas shall have jurisdiction to hear any dispute under potential contracts and serviced may be made upon TSLAC by first class mail to its address as set forth herein.

V. SOURCE OF FUNDS

The total amount of this contract shall not exceed **sixty-four thousand eight hundred and no/100 dollars ($64,800.00)** without prior approval from the TSLAC's Purchasing Department and an executed amendment to this Contract.

This Contract is subject to availability of funds and may be cancelled with no additional cost to the agency if appropriations become unavailable. If this Contract is cancelled due to the unavailability of appropriations, the agency will only pay for services that have already been rendered up to the date of cancellation.

A breakdown of the funding under Grant Number: LS-00-15-0044-15 - FFY 2015 | CFDA: 45.310 - Grants to States | Institute of Museum and Library Services is provided below:

Percentage of total costs of the program which will be financed with Federal money:	0%
Dollar Amount of Federal funds for this project:	$0.00
Percentage of total costs of the program which will be financed with non-Federal sources:	100%
Dollar amount of non-Federal sources for the project:	$64,800.00

VI. TSLAC AUTHORIZATION

TSLAC represents and warrants that it has the right to enter into this Contract on behalf of each and every one of the K-12 Public School Libraries under the TexQuest Program. To the best of its ability, TSLAC shall work with all of the K-12 Public School Libraries and all Authorized Users to ensure reasonable compliance with all terms and conditions of this Contract.

VII. ACCESSIBILITY REQUIREMENTS

Under Texas Government Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources (DIR), TSLAC must procure Products that comply with the Accessibility Standards when such Products are available in the commercial marketplace or when such services are developed in response to a procurement solicitation. Accordingly, ProQuest, LLC must provide electronic and information resources and associated Product documentation and technical support that comply with Accessibility Standards.

A. Evaluation, Testing and Monitoring

1. TSLAC may review, test, evaluate and monitor ProQuest, LLC's Products and associated documentation and technical support for compliance with the Accessibility Standards. Reviewing, testing, evaluation and monitoring may be conducted before and after the award of this Contract. Testing and monitoring may include user acceptance testing.

2. Neither (a) the review, testing (including acceptance testing), evaluation or monitoring of any Product, nor (b) the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest ProQuest, LLC's assertion of compliance with the Accessibility standards.

3. ProQuest, LLC agrees to cooperate fully and provide TSLAC and its representatives timely access to Products, records and other items and information needed to conduct such review, evaluation, testing and monitoring.

B. Representations and Warranties

1. ProQuest, LLC represents and warrants that: (a) as of the effective date of this contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the contract, unless and to the extent the Parties otherwise expressly agree in writing; and (b) if the Products will be in the custody of the state or TSLAC client or recipient after the contract expiration or termination, the Products will continue to comply with such Accessibility Standards after the expiration or termination of the contract term, unless TSLAC and/or the K-12 Public School Libraries use the Product in a manner that renders it noncompliant.

2. In the event ProQuest, LLC should have known, becomes aware, or is notified that the Product and associated documentation and technical support do not comply with the Accessibility Standards, ProQuest, LLC represents and warrants that it will, in a timely manner and at no cost to TSLAC and/or the K-12 Public School Libraries, perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation, replacement, and upgrading of the Product, or providing a suitable substitute.

3. ProQuest, LLC acknowledges and agrees that these representations and warranties are essential inducements on which TSLAC relies in awarding this contract.

4. ProQuest, LLC's representations and warranties under this subsection will survive the termination or expiration of the contract and will remain in full force and effect throughout the useful life of the Product.

C. **Remedies**

1. Pursuant to Texas Government Code Sec. 2054.465, neither ProQuest, LLC nor any other person has cause of action against TSLAC for a claim of a failure to comply with Texas Government Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.

2. In the event of a breach of ProQuest, LLC's representations and warranties, ProQuest, LLC will be liable for direct and consequential damages and any other remedies to which TSLAC may be entitled. This remedy is cumulative of any and all other remedies to which TSLAC may be entitled under the contract and other applicable law.

D. **Timeline for ADA Requirements Completion**

Accessibility Issue	**Estimated date to be resolved:**
a. No VPAT issues to address	N/A

VIII. PAYMENT FOR SERVICES

Vendor must submit invoices for all items delivered to and accepted by TSLAC. Invoices must contain the Vendor name, Texas Identification Number (TIN), remittance address (city, state, zip code), telephone number, TSLAC's full name, delivery address (see below), Contract Number, a description with the dates of service, and the total dollar amount. Performing Vendor must place the following Contract number on each invoice issued under this Contract.

TSLAC shall timely reimburse ProQuest, LLC based upon receipt of itemized invoices submitted by ProQuest, LLC in compliance with TSLAC's invoicing instructions and in accordance with the Texas Prompt Payment Act. TSLAC shall make reimbursements by direct deposit or the issuance of state warrants for payment to ProQuest, LLC.

All reimbursements must be drawn on the appropriation item(s) or account(s) of the TSLAC from which like expenditures would normally be paid, based upon vouchers drawn by ProQuest, LLC's payable to TSLAC within thirty (30) days of receipt of invoices.

Invoices must contain the Vendor's legal name, Texas Identification Number (TIN), remittance address (city, state, zip code), telephone number, and TSLAC'S full name, delivery address, the tracking number listed below, a full description of Products purchased or dates of service, unit numbers corresponding to the deliverables listed in the Contract, and total dollar amount for the invoiced items.

Vendor must place the following tracking number on each invoice for the time period specified in this contract. Tracking numbers for additional terms will be assigned in future renewal documents.

For Contract Term of June 15, 2016 – June 14, 2017: 306-16-8467

Invoices for services must contain the Contract number listed above and be submitted to the following address. Invoices not sent to either the physical OR email address below **will not** be accepted nor processed for payment.

Texas State Library and Archives Commission
Accounting Department
P O Box 12516
Austin, Texas 78711

OR, via email at: AP@tsl.texas.gov

Vendor must submit invoices for all items delivered to and accepted by the Receiving Agency within 30 days of providing services.

Payments to ProQuest, LLC, Inc. will be tied to the successful completion of specified projects and/or services for the given month. ProQuest, LLC, Inc. may submit invoices as services are completed, but shall submit no more than one invoice per month and those invoices will be for authorized expenses performed under the terms of this Contract. Once the invoice is reviewed and accepted and services for a month are determined complete by TSLAC, approval for payment will be processed upon receipt of an accepted invoice.

IX. TERMS AND CONDITIONS

TSLAC's Terms and Conditions are those listed in Appendix B of this Contract. The Texas State Library and Archives Commission reserves the right to amend or add to the terms and conditions as necessary. ProQuest, LLC will be made aware of any changes.

LSTA Terms and Conditions are those listed in Appendix C of this Contract. These terms and conditions may not be altered.

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION
Contract for Services
Contract # 306-16-8467

THE UNDERSIGNED RECEIVING AGENCY Hereby certifies that:

(1) Services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of State Government;

(2) The services, supplies or materials contracted for are not required by Section 21, Article 16, of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

RECEIVING AGENCY

Texas State Library & Archives Commission
1201 Brazos Street
Austin, Texas 78701

Mark Smith 4/19/16
Mark Smith — Date
Director & Librarian

Approved by:

Donna Osborne 4/14/16
Donna Osborne — Date
Chief Operations and Fiscal Officer

4/14/16
Deborah Littrell — Date
Library Development and Networking Director

4/14/16
Ann Griffith — Date
Electronic Resources Coordinator

4-14-16
Charlotte Craig, CTPM, CTCM — Date

PERFORMING VENDOR

ProQuest, LLC
789 E. Eisenhower Parkway
Ann Arbor, MI 48108

4/15/16
Signature — Date
~~Bee Horton~~ CATHLEEN L MAY

~~Vice President for Consortia~~
Title DIRECTOR, GLOBAL BIDS & CONTRACTS

March 30, 2016

Pam Rodriguez
Texas Library and Archives Commission.
Lorenzo de Zavala, State Archives and Library Building
1201 Brazos Street
Austin, TX 78701

Regarding: Requested Resources for TexQuest and TexShare: Best and Final Offer

Dear Ms. Rodriguez:
ProQuest is delighted to provide herein confirmation of our Best and Final Offer to provide requested resources to the TexQuest and TexShare programs, as follows:

Requested Resources for the TexQuest Program (306-16-8175B):

	1st Year	2nd Year	3rd Year	Beyond
SIRS Discoverer	$64,800	$66,096	$67,418	2% annual increase for the term of this contract and any extensions thereof.

Requested Resources for the TexShare Program (306-16-817A):

Complete STEM ProQuest Resources, including:	1st Year	2nd Year	3rd Year	Beyond
• ProQuest SciTech Collection	$676,875	$690,413	$704,221	2% annual increase for the term of this contract and any extensions thereof.
• Science & Technology Ebook Subscription	$84,645	$86,338	$88,065	2% annual increase for the term of this contract and any extensions thereof.
E-Libro Premium	$85,500	$87,210	$88,954	2% annual increase for the term of this contract and any extensions thereof.
DASH!	No additional charge with a subscription to either or both ebook products			

To support Texas learners, researchers, and libraries, ProQuest commits to participating in the TexQuest Roadshow Training for the ESCs, and to provide a dedicated Customer Experience Manager to support TexQuest and TexShare libraries.

Kind regards,

Cathleen L. May, Ph.D.
Director, Global Bids and Contracts
Copies: Boe Horton, David Conkling, Anthony Targan

789 E. Eisenhower Parkway • P.O. Box 1346 • Ann Arbor, MI 48106-1346 • U.S.A. • Tel: 734.761.4700 • Toll-free: 800.521.0600 www.proquest.com

APPENDIX B
Texas State Library and Archives Commission
Terms & Conditions

All of the following terms and conditions are hereby made part of this contract with the Texas State Library and Archives Commission (TSLAC) by reference. Submitting a Response with a false statement is a material breach of contract and shall void the submitted Response or any resulting contracts, and the Vendor shall be removed from all bid lists.

Contracts awarded by TSLAC shall be governed by and construed in accordance with the laws of the State of Texas. The federal or state courts of the United State located in Texas shall have jurisdiction to hear any dispute under potential contracts and serviced may be made upon TSLAC by first class mail to its address as set forth herein.

In the events of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the following order of priority: Signed TSLAC Contract, TSLAC Terms and Conditions, Attachments to the Contract, the Solicitation, and Vendor's Response to the Solicitation.

1. **Notices.** Unless specifically noted elsewhere in this Contract, any written notices required under this Contract will be either hand delivered to Vendor's office address specified on the signature page of this Contract or to TSLAC's Purchasing Department, 1201 Brazos Street, Room 309, Austin, Texas 78701, or by U.S. Mail, certified, return receipt requested, addressed to the appropriate foregoing address. Notice will be effective on receipt by the affected party. Either party may change the designated notice address by written notification to the other party.

2. **Debarred Vendors List.** Vendor represents and warrants that it and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local government entity and that Vendor is in compliance with the State statues and rules relating to procurement and that Vendor or its subcontractors are not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at http://www.sam.gov.

3. **Duty to Disclose.** If circumstances change or additional information is obtained regarding any of the representations and warranties, or any other disclosure statements, provided by Vendor subsequent to the date of this Contract, Vendor's duty to disclose continues through the term of this Contract.

4. **Sales and Use Tax.** The TSLAC, as an agency of the State of Texas, qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Vendor may be able to claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. Excise Tax Exemption Certificates are available upon request.

5. **Observance of TSLAC Rules and Regulations.** Vendor agrees that at all times its employees will observe and comply with all regulations when accessing the TSLAC facilities, including, but not limited to, parking and security regulations.

6. **Non-Appropriation of Funds.** ~~The State funds are contingent on the availability of lawful appropriates by the Texas Legislature. If the Texas Legislature fails to continue funding for the payments due under an order referencing this contract; the order will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments.~~ In the event, sufficient funds are not appropriated to TSLAC by the Legislature of the State of Texas, ProQuest agrees to negotiate with the State to continue services based on available funds, but acknowledges that the State may terminate if no viable alternative exist or if the parties agree on the level of reduced or substitute services. [Updated per the Vendor's request]

7. **No Other Benefits.** Vendor shall have no exclusive rights or benefits other than those set forth herein.

8. **Prohibited Use of Appropriated or Other Funds Under Control of State Agency; Lobbying.** Vendor represents and warrants that TSLAC's payment to Vendor and Vendor's receipt of appropriated or other funds under this any resulting Contract are prohibited from use to pay or employ a lobbyist. Refer to Texas Government Code § 556.005 or § 556.008. *[Updated 1/13/2016]*

9. **Public Information Act.** Information, documentation, and other material in connection with this solicitation or contract may be subject to public disclosure pursuant to the Texas Government Code § 552.021 (the "Public Information Act"). Any part of a submitted Response that is of a confidential or proprietary nature must be clearly and prominently marked on each page as such by the Vendor.

10. **Confidentiality and Open Records.** Vendor shall take all necessary and appropriate action to safeguard all sensitive data and other confidential information from unauthorized disclosure. Whenever the transmission of confidential information is necessary, Vendor shall transmit the information electronically, and such electronic transmission shall be secure and the data encrypted, at a minimum, using 128 AES encryption to protect it from unauthorized disclosure.

    Notwithstanding any provisions of this Contract to the contrary, Vendor understands that TSLAC will comply with the Texas Public Information Act as interpreted by judicial opinions and opinions of the State's Attorney General. Within three (3) days of receipt, Vendor shall refer to TSLAC any third party requests received directly by Vendor for information to which Vendor has access as a result of or in the course of performance under this Contract. Vendor is required to make any information created or exchanged with the state pursuant to this contract, and 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.

11. **Antitrust.** Vendor represents that neither the Vendor nor the company, corporation, partnership, or institution represented by the Vendor, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State or the Federal Antitrust Laws, nor communicated directly or indirectly the proposal to any other person engaged in such line of business.

12. **No Conflicts.** Vendor represents and warrants that Vendor has no actual or potential conflicts of interest in providing services to TSLAC under this Contract and that Vendor's provision of services under this Contract would not reasonably create an appearance of impropriety. Without limitation on the foregoing, other disclosures required under this Contract, and other prohibited work provisions of this Contract, Vendor shall, throughout the term of this Contract, comply with and provide all of the following to TSLAC, upon request: a copy of Vendor's most recent audit, if any, together with a full disclosure of any and all internal control weaknesses, if any; disclosure and detailed description of Vendor's most recent peer review, if any, stating the date of the review and irregularities, if any, and concluding comments; disclosure and detailed description of any emerging irregularities, if any, that could materially affect TSLAC's interests; and disclosure and detailed description of how Vendor determines whether Vendor's outside auditors provide consulting or other services to Vendor or Vendor's clients or to TSLAC.

13. **Specifications.** The State will not be bound by any oral statement or representation contrary to the written specifications.

14. **Delivery.**

    a) Delivery shall be made during normal business hours (8am-5pm, CT), unless prior approval has been obtained from the TSLAC.
    b) No substitutions permitted without written approval of the TSLAC's Purchasing Department.
    c) If delay is foreseen, vendor shall give written notice to the TSLAC. Vendor must keep the TSLAC advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TSLAC to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.

15. **Permits, Licenses.** Vendor represents and warrants that it has obtained all necessary permits, licenses, easements, waivers, and permissions of whatsoever kind required for its performance and the performance of its subcontractors under this Contract.

16. **Contract Fulfillment.** If federal or state laws or regulations or other federal or state requirements are amended and judicially interpreted so that either party cannot reasonably fulfill this contract, and if the parties cannot agree to an amendment that would enable substantial continuation of the contract, the parties shall be discharged from any further obligations under this contract.

17. **Control; Ownership; Legal Proceedings.** Vendor shall immediately notify TSLAC in writing of any actual or anticipated change in the control or ownership of Vendor and of any legal or administrative investigations or proceedings initiated against Vendor regardless of the jurisdiction from which such proceedings originate.

18. **Time Limits.** Time is of the essence in the performance of this Contract. Vendor shall strictly comply with all of the deadlines, requirements, and Standards of Performance for this Contract.

19. **Inspection and Tests.** All goods will be subject to inspection and test by the State. Authorized TSLAC personnel shall have access to supplier's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the Response or on samples taken from regular shipments. All costs shall be borne by the vendor in the event products tested fail to meet or exceed all conditions and requirements of the specification. Goods delivered and rejected in whole or in part may, at the State's option, be returned to the vendor or held for disposition at vendor's expense. Latent defects may result in revocation of award.

20. **Payment.** Payment shall be made in accordance with Texas Prompt Payment Act, as specified in the Texas Government Code Chapter 2251. TSLAC shall not pay any amounts for any purpose to Vendor or any entity, except as expressly provided in the Contract. TSLAC reserves the right to make payments only upon receipt of a correct invoice, including all of the required supporting documentation. TSLAC also reserves the right to refuse payments for invoices that exceed the rates specified in the Contract.

21. **Dispute Resolution.** Unless an applicable state statute or applicable federal law establishes another procedure for the resolution of disputes, the dispute resolution process provided for in Texas Government Code Chapter 2260 shall be used, as further described herein, by TSLAC and the Vendor to attempt to resolve all disputes arising under this contract. Vendor claims 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 the Texas Government Code Chapter 2260, Subchapter B. To initiate the process, Vendor shall submit written notice, as required by subchapter B, to the Chief Financial Officer or the designate. Said notice shall specifically state that the provisions of Chapter 2260, Subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of Vendor and the TSLAC otherwise entitled to notice under the parties' contract. Compliance by Vendor with Subchapter B is a condition precedent to the filing of a contested case proceeding under the Texas Government Code Chapter 2260, Subchapter C. The contested case process, provided in the Texas Government Code Chapter 2260, Subchapter C, is Vendor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by TSLAC if the parties are unable to resolve their disputes under this Section. Compliance with the contested case process provided in Subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by TSLAC nor any other conduct of any representative of TSLAC relating to this contract shall be considered a waiver of sovereign immunity to suit. The submission, processing and resolution of Vendor's claim is governed by the published rules adopted by the Office of the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found in the Texas Administrative Code. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Vendor, in whole or in part.

22. **Gifts.** The Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response or contract.

23. **Compensation.** Pursuant to the Texas Government Code § 2155.004, the Vendor has not received compensation for participation in the preparation of the specifications for this solicitation or contract.

24. **Certification Regarding Non-Payment of Child Support.** Pursuant to Family Code § 231.006 (d), re: child support, the Vendor certifies that the individual or business entity named in this Response is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any bidder subject to § 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the bid. This information must be provided prior to award.

25. **Eligibility.** Under the Texas Government Code § 2155.004, the vendor certifies that the individual or business entity named in this Response or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Vendor represents and warrants that it is not delinquent in the payment of any franchise taxes owed the State.

26. **Liability for Taxes.** Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales or excise taxes of Vendor or its employees. TSLAC shall not be liable for any such taxes resulting from this Contract.

27. **HUBs.** Vendor represents and warrants that it shall comply with the Historically Underutilized Business requirements of this Contract.

28. **Indemnification.** Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. The Attorney General of Texas is required to represent the State of Texas in court, and this is a duty not often ceded to contractors. The Vendor can represent itself in any suit under these provisions, but TSLAC will be represented by the OAG. [Updated by TSLAC]

29. **Debt.** Vendor agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas. Vendor shall comply with rules adopted by TSLAC under the Texas Government Code § 403.055, §403.0551, §2252.903 and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State.

30. **Executive Head of a State Agency.** Pursuant to Texas Government Code §669.003, the TSLAC may not enter into a contract with a person who employs a current or former Executive Head of a state agency until four years have passed since that person was the executive head of the state agency. By submitting a response to the solicitation, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years.

31. **State Auditor's Clause.** Vendor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards.

32. **Infringements.**

    a) Vendor shall indemnify and hold harmless TSLAC and the State of Texas, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, trade and service marks, copyrights, trade secrets or other proprietary rights, and any other intellectual or intangible property rights in connection with the PERFORMANCE OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INLCUDING ATTORNEY'S FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDEANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

    b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to TSLAC's specific instructions, (iv) any intellectual property right owned by or licensed to TSLAC, or (v) any use of the product or service by TSLAC that is not in conformity with the terms of any applicable license agreement.

    c) If Vendor becomes aware of an actual or potential claim, or TSLAC provides the Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against TSLAC, shall) at Vendor's sole option and expense; (i) procure for the Vendor the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that TSLAC's use in non-infringing.

33. Patents and Copyrights. Vendor shall defend and indemnify TSLAC and the State of Texas against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from TSLAC's or Vendor's use of or acquisition of any services or other items provided to TSLAC by Vendor or otherwise to which TSLAC has access as a result of Vendor's performance under this Contract, provided that TSLAC notify Vendor of any such claim within a five (5) working days time of TSLAC's receiving notice of any such claim. If Vendor is notified of any claim subject to this Section, Vendor shall notify TSLAC of such claim within five (5) working days of such notice. If TSLAC determines that a conflict exists between its interests and those of Vendor or if TSLAC is required by applicable law to select separate counsel, TSLAC shall be permitted to select separate counsel, and the actual costs TSLAC's counsel shall be paid by Vendor. No settlement of any such claim shall be made by Vendor without TSLAC's prior written approval. Vendor shall reimburse TSLAC and the State of Texas for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs arising from any such claim. Vendor represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and claims.

34. Vendor Assignments. Vendor hereby assigns an ordering agency any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A Section 1, et seq (1973), and the antitrust laws of the State of Texas, TEX. Bus. & Comm. Code Ann. Sec. 15.01, et seq (1967).

35. Default. If the Vendor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms and conditions of the Contract, the TSLAC may, upon written notice of default to the Vendor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.

The TSLAC may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless the TSLAC notifies the Vendor in writing prior to the exercise of such remedy. The Vendor shall remain liable for all covenants and indemnities under the Contract. ~~The Respondent shall be liable for all costs and expenses, including court costs, incurred by the TSLAC with respect to the enforcement of any of the remedies listed herein.~~ If ProQuest fails to provide the goods or services contracted for according to the provision of the Contract, or fails to comply with any of the material terms and conditions of the Contract, TSLAC may provide written notice providing reasonable particular of the details of the alleged default to the ProQuest and ProQuest shall have 30 says fro its receipt of such notice of such longer period of time as is reasonably required if the default cannot be remedied within such thirty (30) day period. If ProQuest fails to remedy such default with the period of thirty (30) days or such longer period of time as is reasonably required if the default cannot be remedied within such thirty (30) day period, TSLAC may (at its option) terminate all or any part of this Agreement upon written notice to ProQuest. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under Contract. [Updated per the Vendor's request]

36. Cancellation. The cancellation of the agreement, under any circumstances whatsoever, shall not effect or relieve Vendor from any obligation or liability that may have been incurred or will be incurred pursuant to this agreement, and such cancellation by TSLAC shall not limit any other right or remedy available to the TSLAC at law or in equity.

37. Agreement Amendments. No modification or amendment to the agreement shall become valid unless in writing and signed by both parties. All correspondence regarding modifications or amendments to the agreement must be forwarded to the TSLAC Purchasing Department for prior review and approval. Only the contract administrator within the Purchasing Department or his/her designee will be authorized to sign changes or amendments.

38. Independent Vendor Status. Vendor agrees that Vendor and Vendor's employees and agents have no employer-employee relationship with TSLAC. TSLAC shall not be responsible for the Federal Insurance Contribution Act (FICA) payments, federal or state unemployment taxes, income tax withholding, Workers Compensation insurance payments, or any other insurance payments, nor will TSLAC furnish any medical or retirement benefits, any paid vacation or sick leave.

39. Publicity. Vendor agrees that it shall not publicize this agreement or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of TSLAC's name in connection with any sales promotion or publicity event without the prior express written approval of TSLAC.

40. Severability. If one or more provisions of this agreement, or the application of any provision to any party or circumstance is held invalid, unenforceable, or illegal in any respect, the remainder of the agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

41. No Waiver. Nothing in this agreement shall be construed as a waiver of the state's sovereign immunity. This agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under this agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TSLAC does not waive any privileges, rights defenses, or immunities available to TSLAC by entering into this agreement or by its conduct prior to or subsequent to entering into this agreement.

42. Property Rights. For purposes of this contract, the term "work" is defined as all reports, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under the contract. The TSLAC and Vendor intend this contract to be a contract for services, and each considers the work and any and all documentation or other products and results of the services to be rendered by Vendor to

be a work made for hire. By execution of a contract for these services, Vendor acknowledges and agrees that the work (and all rights therein) belongs to and shall be the sole and exclusive property of the TSLAC.

If, for any reason, the work would not be considered a work-for-hire under applicable law, Vendor does hereby sell, assign, and transfer to the TSLAC, its successors and assigns, the entire right, title and interest in and to the copyright of the work and any registrations and copyright applications relating thereto, and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and all to rights corresponding to the foregoing. Vendor agrees to execute all papers and to perform such other property rights as the TSLAC may deem necessary to secure for TSLAC or its designee the rights herein assigned.

Copyrightable material made by the Vendor for TSLAC shall be considered work-made-for-hire for TSLAC within the meaning of the copyright laws. Vendor shall assign all rights, title and interest in such copyrightable materials to TSLAC. Should this work product prove to be patentable, Vendor will assign all patent rights to TSLAC upon request. TSLAC shall have the right, at its discretion, to keep such work product as a trade secret.

Vendor and Vendor's employees shall have no rights of ownership of the Work and any documentation or other products and results of the services or any other property of TSLAC. Any property or Work not specifically scheduled in this Contract as property of Vendor shall constitute property of TSLAC.

In addition to compliance with the right to examination provisions of the Contract, Vendor must deliver to TSLAC, no later than the forty-eight (48) hours after receipt of TSLAC's written request for same, all completed or partially completed Work and any and all documentation or other products and results of the Services under such Contract. Vendor's failure to timely deliver such Work or any documentation or other products and results of the Services will be considered a material breach of the Contract. With the prior written approval of TSLAC, this forty-eight (48) hour period may be extended for delivery of certain completed or partially completed Work or other such information, if such extension is in the best interest of the State of Texas or TSLAC. If Vendor fails to deliver such Work within forty-eight (48) hours after receipt of written request for same, TSLAC may withhold all payments to Vendor, may withhold all authorization for payment of previously approved and future invoices, may impose liquidated damages of $1,000 per each twenty-four (24) hour period of delay, or a pro rata amount for any portion of each such twenty-four (24) hour period. During the transition from any successor of the Vendor, TSLAC may impose liquidated damages of $2,000 rather than $1,000 per each twenty-four (24) hour period of delay, or a pro rata amount for any portion of each such twenty-four (24) hour period. These liquidated damages are in addition to other remedies and rights that are applicable or available to TSLAC for such failure or delay under this Contract.

43. Acceptance of Products and Services. All products furnished and all services performed under this agreement shall be to the satisfaction of TSLAC and in accordance with the specifications, terms, and conditions of this contract. TSLAC reserves the right to inspect the products furnished or the services performed, and to determine the quality, acceptability, and fitness of such products or services.

44. Deceptive Trade Practices Act (DTPA). Vendor represents and warrants that it has not been the subject of a Deceptive Trade Practices Act or any unfair business practice administrative hearing or court suit, and that Vendor has not been found to be guilty of such practices in such proceedings. Vendor certifies that it has no officers who have served as officers of other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business administrative hearing or court suit, and that such officers have not been found to be guilty of such practices in such proceedings.

45. Immigration. Vendor represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986, the Immigration Act of 1990 ("Immigration Act"), and the Illegal Reform and Immigrant Responsibility Act of 1996 ("IRIRA") regarding employment verification and retention of verification forms for any individuals hired who will perform any labor or services under this Contract. Vendor also represents and warrants that it shall comply with the requirements of the Immigration Act regarding creation of the lottery system for granting visas and IRIRA which created three (3) year, ten (10) year and permanent bars to entrance into the United States.

46. Criminal Conviction Certification. The Vendor represents and warrants that Vendor has not and Vendor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Vendor has fully advised TSLAC as to the facts and circumstances surrounding the conviction. Vendor has a continuing duty to amend, supplement or correct this representation and warranty not later than ten (10) days after discovering additional information relating to felony criminal convictions of Vendor or any of its employees. Vendor shall not allow any employee convicted of a felony criminal offense to perform tasks related to the contract without such disclosure and express permission from TSLAC.

47. Subcontracting. It is contemplated by the parties hereto that the Vendor shall conduct the performances provided by this contract substantially with its own resources and through the services of its own staff. In the event the Vendor should determine that it is necessary or expedient to subcontract for any of the performances specified herein, the Vendor shall subcontract for such performances only after the Vendor has transmitted to TSLAC a true copy of the subcontract the Vendor proposes to execute with a subcontractor and has obtained TSLAC's written approval for subcontracting the subject performance in advance of executing a subcontract. The Vendor, in subcontracting for any products or performances specified herein, expressly understands and acknowledges that in entering into such subcontracting(s), TSLAC is in no manner liable to any subcontractor(s) of the Vendor. In no event shall this provision relieve the Vendor of the responsibility for ensuring that the finished products and/or services rendered under all subcontracts are rendered so as to comply with all terms of this contract.

48. Assignment. The Vendor will not assign its rights under this contract or delegate the performance of its duties under this contract without prior written approval from TSLAC.

49. Accessibility. TSLAC is required to follow Texas Administrative Code, Title 1, Part 10, Chapter 206, Accessibility and Usability of State Web Sites, Texas Administrative Code, Title 1, Part 10, Chapter 213, and the Federal Section 508, Accessibility Standards.

Notwithstanding the above and for the avoidance of all doubt, it should be noted that although the ProQuest platform is Section 508 compliant, image databases that TSLAC may order from ProQuest under this Agreement are based upon image reproduction and current technology does not allow the transformation of images into a non-visual text based format. Not transforming images into a non-visual based format does not constitute a breach or default under this Agreement. In the event that this Agreement is terminated by TSLAC prior to the expiration of the annual term of this Agreement due to breach not related to transforming images into a non-visual based format, ProQuest shall refund all fee applicable to the unexpired term of this Agreement on a pro-rated basis. [Included at the Vendor's request]

50. Ethics. Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in the Texas Government Code §2155.003. The Rule outlines the ethical standards required of public purchaser, employees, and vendors who interact with public purchasers in the conduct of state business. Specifically, a TSLAC employee may not have an interest in, or in any matter be connected with a contract or solicitation for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of TSLAC or purchasers of other state agencies.

51. Convictions in connection with Hurricane Katrina, Hurricane Rita, and subsequent disasters. Per Senate Bill 608, 80th Legislative Session, TSLAC will not accept Responses, nor award contracts to persons convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Katrina, Hurricane Rita, and subsequent disasters.

52. Equal Opportunity. Vendor represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age and disability in the performance of awards.

53. Drug Free Workplace. The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

54. Force Majeure. Neither Vendor nor TSLAC shall be liable to the other for any delay in, or failure of performance, of any requirement included in any award resulting from a solicitation caused by force majeure. 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. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

55. Termination. Vendor shall have the right to terminate contracts awarded from this Contract upon a material breach of its terms by TSLAC, which are not cured within thirty (30) days of written notice. If Vendor (a) terminates or suspends its business (b) becomes subject to any bankruptcy or insolvency proceeding under any Federal or State statue or (c) becomes or subject to direct control by a trustee, receiver, or similar authority, TSLAC may, in addition to its other legal rights and remedies, terminate this agreement on seven (7) days notice to Vendor. Upon such termination, Vendor will offer TSLAC a prorated refund or subscription fee.

In the event that the Contract is terminated for any reason, or upon its expiration, the TSLAC shall retain ownership of all associated work products and documentation obtained from the Vendor under the Contract.

56. Termination for Convenience. TSLAC reserves the right, in its sole discretion, to terminate the Contract on thirty (30) days written notice to the Vendor. TSLAS also reserves the right, in its sole discretion, to terminate the Contract immediately, with written notice to the Vendor, if it is in the best interests of TSLAC or the State. TSLAC will receive a pro rata refund for any unused services after termination of the Contract. [Updated by TSLAC]

57. Termination Remedies. Upon an Event of Default, TSLAC, without limiting any other rights or remedies it may have by law, equity, or under this Contract, will have the right to institute an action for actual damages and/or injunctive relief and/or to terminate the Contract immediately. TSLAC's termination of this Contract shall not limit or waive any remedies TSLAC may have for breach by Vendor of its past, present, or future duties and obligations created by this Contract or otherwise required by applicable law.

All remedies available to TSLAC for breach or anticipatory breach of this Contract by Vendor are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. Liquidated damages, actual damages, cost projections, injunction relief and/or performance bonds may also be invoked either separately or combined with any other remedy in accordance with applicable law.

58. Survival of Terms. Termination of this Contract for any reason shall not release the Vendor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

59. Supporting Documents; Right to Audit; Independent Audits. Vendor shall maintain and retain supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable TSLAC and State of Texas requirements. Vendor shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Vendor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TSLAC, State of Texas or their authorized representatives. Vendor shall cooperate with auditors and other authorized TSLAC and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by TSLAC or the State of Texas. By example, and not as exclusion to other breaches or failures, Vendor's failure to comply with this Section shall constitute a material breach of this Contract and shall authorize TSLAC to immediately assess liquidated damages as described in Section 29 of Appendix C for such failure. For purposes of this Section, the "State's property" includes, but is not limited to, "Work" as defined in the solicitation. TSLAC may require, at Vendor's sole cost and expense, independent audits by a qualified certified public accounting firm of Vendor's books and records or the State's property. The independent auditing shall provide TSLAC with a copy of such audit at the same time it is provided to Vendor. TSLAC retains the right to issue the request for Statement of Qualifications for the services of an independent certified public accounting firm under this Contract. In addition to and without limitation on the other audit provisions of this Contract, pursuant to the Texas Government Code §2262.003, the state auditor may conduct an audit or investigation of Vendor or any other entity or person receiving funds from the state directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Vendor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Vendor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Contract may be amended unilaterally by TSLAC to comply with any rules and procedures of the state auditor in the implementation and enforcement of § 2262.003.

Under procedures provided by the state auditor on September 5, 2003, in addition to the above,

1. Vendor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the state auditor to conduct an audit or investigation in connection with those funds;
2. Vendor further agrees to cooperate fully with the state auditor in the conduct of the audit or investigation, including providing all records requested;
3. Vendor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards; and
4. The state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Vendor relating to this Contract.

60. Limitation on Authority; No Other Obligations. Vendor shall have no authority to act for or on behalf of TSLAC or the State of Texas except as expressly provided for in the Contract; no other authority, power or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or TSLAC.

61. Records Retention. Vendor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under this Contract funds were expended in accordance with the laws and regulations of the State of Texas, including, but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Vendor shall maintain all such documents and other records relating to this Contract and the State's property seven (7) years after the expiration or termination of the Contract. *[Updated 04/08/2016]*

62. Insurance & Other Security. Vendor represents and warrants that it will, upon five (5) days of request, provide TSLAC with current written certificates of insurance or other proof acceptable to TSLAC of the following insurance coverage:

a) Standard Workers Compensation Insurance covering all personnel who will provide services under the Contract;
b) Commercial General Liability Insurance, personal injury and advertising injury with, at a minimum, the following limits: $500,000 minimum each occurrence; $1,000,000 per general aggregate.
c) Professional Liability Insurance: $500,000 minimum each occurrence limit; $1,000,000 minimum aggregate limit.

Vendor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with 'A' rating from Best, and authorized to provide the corresponding coverage. Vendor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to TSLAC. Vendor represents and warrants that it shall maintain the above insurance coverage during the term of the Contract, and shall provide TSLAC with an executed copy of the policies immediately upon request.

63. Workers' Compensation Insurance Coverage.

a) Definitions:

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

b) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, § 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

c) The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

d) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

e) The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

f) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

g) The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

h) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

i) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, § 401.011(44) for all of its employees providing services on the project, for the duration of the project;

2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

4) obtain from each other person with whom it contracts, and provide to the contractor:

i. a certificate of coverage, prior to the other person beginning work on the project; and

ii. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

j) By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

k) The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

l) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. TSLAC AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

m) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS TSLAC, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYEMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITSPERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABILE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE TSLAC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

64. Workers Compensation & Employers Liability. Vendor represents and warrants that it will, upon five (5) days of request, provide TSLAC with current certificates of insurance or other proof acceptable to TSLAC of the following insurance coverage: must maintain Workers' Compensation insurance coverage in accordance with statutory limits as follows:

a) Standard Workers Compensation Insurance covering all personnel who will provide services under the Contract

b) Commercial General Liability Insurance, Occurrence based:

- Bodily injury and Property Damage
- Each Occurrence limit: $1,000,000
- Aggregate limit: $2,000,000
- Medical Expense each person: $5,000
- Personal Injury & Advertising Liability: $1,000,000
- Products/Completed Operations Aggregate Limit: $2,000,000
- Damage to Premise Rented to You: $50,000

c) Professional Liability Insurance: $500,000 minimum each occurrence limit; $1,000,000 minimum aggregate limit

d) Employers Liability: Each Accident $1,000,000

e) Disease – Each Employee: $1,000,000

f) Disease – Policy Limit: $1,000,000

Vendor represents and warrants that all of the above coverage is with companies licensed in the state of Texas, with 'A' rating from Best, and authorized to provide the corresponding coverage. Vendor also represents and warrants that all policies contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to TSLAC. Vendor represents and warrants that it shall maintain the above insurance coverage during the term of the Contract, and shall provide TSLAC with an executed copy of the policies immediately upon request.

65. Vendor Responsibility for Damage to Government Property. The Vendor shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Vendor an its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Vendor shall notify the TSLAC Project Manager in writing of any such damage within one (1) calendar day.

66. Vendor Performance. The TSLAC may monitor the performance of the Contract issued under this solicitation. All services and goods under the Contract shall be performed at an acceptable service levels and in a manner consistent with acceptable industry standards, custom, and practice. The Vendor will receive a paper copy of this report, as well as an e-mailed copy. The TSLAC will provide a sample of the Vendor Performance Report upon request.

67. Change Management. Vendor shall assign only qualified personnel to this Contract. Vendor, in it's reasonable discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required. Vendor shall provide to TSLAC prior written notice of any proposed change in key personnel involved in providing services under this Contract. Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of the Vendor. No subcontract under the Contract shall relieve the Vendor of responsibility for ensuring the requested services are provided. If Vendor uses a subcontractor for any or all of the work required, the following conditions shall apply:

a) Vendors planning to subcontract all or a portion of the work to be performed shall identify the proposed subcontractors.
b) Subcontracting shall be solely at Vendor's expense.
c) TSLAC retains the right to check subcontractor's background and approve or reject the use of submitted subcontractors.
d) Vendor shall be the sole contact for TSLAC. Vendor shall list a designated point of contact for all TSLAC inquiries.

68. Federal, State, and Local Requirements. Vendor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Vendor is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Vendor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Vendor or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Vendor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Vendor's omission or breach of this Section.

69. Applicable Law & Conforming Amendments. Vendor must comply with all laws, regulations, requirements and guidelines applicable to a Vendor providing services to the State of Texas as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Contract. TSLAC reserves the right, in its sole discretion, to unilaterally amend this Contract throughout its term to incorporate any modifications necessary for TSLAC or Vendor's compliance with all applicable State and federal laws, and regulations.

This Contract may be amended only upon written agreement between TSLAC and Vendor; however, this Contract may not be amended so as to make it conflict with the laws of the State. TSLAC may issue Purchase Order Change Notices for ordering and tracking purposes consistent with this Contract provided such Purchase Order Change Notices reference the Contract.

70. No Liability Upon Termination. If this Contract is terminated for any reason, TSLAC and the State of Texas shall not be liable to Vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Vendor may be entitled to the remedies provided in Texas Government Code Chapter 2260. Vendor or Vendor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing services under any Contract resulting from this solicitation. Vendor or Vendor's employees, representatives, agents and any subcontractors shall not be employees of TSLAC. Should Vendor subcontract any of the services required in this solicitation, Vendor expressly understands and acknowledges that in entering into such subcontract(s), TSLAC is in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve Vendor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this solicitation.

71. Independent Vendor. Vendor or Vendor’s employees, representatives, agents, and any subcontractors shall serve as an independent contracting in providing services under any Purchase Order. Vendor or Vendor’s employees, representatives, agents and any subcontractors shall not be employees of the TSLAC. Should Vendor subcontract any of the services required, Vendor expressly understands and acknowledges that in entering into such subcontract(s), the TSLAC is in no manner liable to any subcontractor(s) of Vendor. In no event shall this provision relieve the Vendor of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with the specifications.

72. Buy Texas. Vendor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

73. Texas Bidder. Vendor represents and warrants that if a Texas address is shown as the address of Vendor, then Vendor qualifies as a Resident Bidder as defined by the Texas Government Code § 2155.444. This term is not applicable when Federal funds are used.

74. Environmental Protection. The Vendor shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq*.) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq*.).

75. TSLAC Anti-Fraud Policy. Vendor represents and warrants that it has read and understood and shall comply with the Comptroller of Public Account’s Anti-Fraud Policy located on the Comptroller’s website at http://www.window.texas.gov/ssv/ethics.html, as such Policy currently reads and as it as amended throughout the term of this Contract.

76. Electronic and Information Resources Accessibility Standards. As Required by 1 Texas Administrative Code Chapter 213 (Applicable to State Agency and Institution of Higher Education Purchases Only)

1) Effective September 1, 2006 state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 Texas Administrative Code Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

2) Vendor shall provide TSLAC with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (http://www.buyaccessible.gov). Vendors not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide TSLAC with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at http://www.section508.gov/.

Vendor will comply with this term to the best of its ability. Please see term #49. [Updated by TSLAC]

77. Provision for Direct Deposit. The electronic funds transfer ("EFT") provisions of Texas law were codified in the Texas Government Code §403.016. Depending on eligibility under the law, certain payments from the State may be directly deposited into Vendor's bank account or may be made by warrant. If Vendor is eligible for direct deposit and wishes to be paid by direct deposit, Vendor must complete the form title "Vendor Direct Deposit Authorization" and return it as soon as possible to: Texas State Library & Archives Commission, Attention: Accounting, PO Box 12516 Austin, Texas 78711.

78. Disclosure of Security Breach. Vendor shall provide notice to the Purchasing Department at (512) 463-3037 or purchasing@tsl.texas.gov within twenty-four (24) hours of Vendor's discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of sensitive or confidential TSLAC information ("Security Incident"). Within twenty-four (24) hours of the notification of a Security Incident, Vendor shall provide a written report to TSLAC's Purchasing Department detailing the circumstances of the incident, which includes at a minimum:

a) A description of the nature of the Security Incident;

b) The type of TSLAC information involved;

c) Who may have obtained TSLAC information;

d) What steps Vendor has taken or will take to investigate the Security Incident;

e) What steps Vendor has taken or will take to mitigate any negative effect of the Security Incident; and

f) A point of contact for additional information.

Each day thereafter until the investigation is complete, Vendor shall provide TSLAC's Purchasing Department with a written report regarding the status of the investigation and the following additional information as it becomes available:

a) Who is known or suspected to have gained unauthorized access to TSLAC information;

b) Whether there is any knowledge if TSLAC information has been abused or compromised;

c) What additional steps Vendor has taken or will take to investigate the Security Incident;

d) What steps Vendor has taken or will take to mitigate any negative effect of the Security Incident; and

e) What corrective action Vendor has taken or will take to prevent future similar unauthorized use or disclosure.

Vendor shall confer with TSLAC's Purchasing Department regarding the proper course of the investigation and risk mitigation. TSLAC reserves the right to conduct an independent investigation of any Security Incident, and should TSLAC choose to do so, Vendor shall cooperate fully by making resources, personnel, and systems access available to TSLAC and TSLAC's authorized representative(s). Subject to review and approval of TSLAC, Vendor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If TSLAC, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be reimbursed to TSLAC by Vendor. If Vendor does not reimburse such costs within thirty (30) days of TSLAC's written request, then TSLAC shall have the right to collect such costs.

79. Information Security Requirements.

a) Vendor shall comply with all applicable state and federal laws and regulations regarding confidentiality, privacy, and security pertaining to TSLAC confidential information.

b) Access to sensitive or confidential TSLAC information. Vendor represents and warrants that it will take all necessary and appropriate action within its abilities to safeguard sensitive or confidential TSLAC information and to protect it from unauthorized disclosure. If communications with Vendor necessitate the release of confidential TSLAC information, the Confidential Treatment of Information

Acknowledgement form (CTIA) must be signed by each individual who will require access to or may be exposed to that information. Vendor shall access TSLAC's systems and sensitive or confidential TSLAC information only for the purposes for which it is authorized.

Vendor shall ensure that any sensitive or confidential TSLAC information in the custody of Vendor is properly sanitized or destroyed when the information is no longer required to be retained by TSLAC or Vendor in accordance with this agreement. Electronic media used for storing any confidential TSLAC information must be sanitized by clearing, purging or destroying in accordance with NIST Special Publication 800-88 Guidelines for Media Sanitization. Vendor must maintain a record documenting the removal and completion of all sanitization procedures with the following information:

1) Date and time of sanitization/destruction,
2) Description of the item(s) and serial number(s) if applicable,
3) Inventory number(s), and
4) Procedures and tools used for sanitization/destruction.

No later than sixty (60) days from contract expiration or termination or as otherwise specified in this agreement,

Vendor must complete the sanitization and destruction of the data and provide to TSLAC all sanitization documentation.

Vendor shall not access, process, store or transmit IRS Federal Taxpayer Information unless expressly authorized by this agreement. Vendor shall comply with IRS Publication 1075 requirements if it accesses, processes, stores, or transmits IRS Federal Taxpayer Information.

c) Access to Internal TSLAC Network and Systems. As a condition of gaining remote access to any internal TSLAC network and systems, Vendor must comply with TSLAC's policies and procedures. TSLAC's remote access request procedures will require Vendor to submit a Remote Access Request form for TSLAC's review and approval. Remote access technologies provided by Vendor must be approved by TSLAC's Information Security Officer. Individuals shall not access internal TSLAC network and systems from outside the United States. Individuals who are provided with access to TSLAC network or systems will be required to participate in TSLAC's Security Awareness Training on an annual basis. The State and TSLAC's Fiscal Year begins on September 1 and ends on August 31. Vendor shall maintain records of all individuals who have completed TSLAC-required training for the duration of the individual's employment with Vendor, plus five years. Upon TSLAC's written request, Vendor shall provide copies of the certificates of completion for TSLAC's Security Awareness Training. On November 1st of each year, Vendor shall submit a list to TSLAC which identifies all individuals who have current access to TSLAC network or systems as well as the most recent training completion date for each individual. TSLAC, in its sole discretion, may deny network or system access to any individual that does not complete TSLAC-required training within thirty (30) calendar days following the date of TSLAC's grant of access under this Contract.

d) TSLAC reserves the right to audit the security measures in effect on Vendor's connected systems without prior warning. Vendor must secure its own connected systems in a manner consistent with an auditable information security framework. TSLAC's audit can consist of a review of third party audit results of Vendor's security measures (e.g., SSAE-16 Type II, ISO 27002 assessment). TSLAC also reserves the right to immediately terminate network and system connections not meeting such requirements.

e) TSLAC data shall not be accessed from, stored at or transported to locations outside of the United States.

f) Where applicable, encryption shall conform to or exceed Federal Information Processing Standard (FIPS) 140-2:

   1) Backup media containing TSLAC data shall be encrypted at all times.

   2) Transmission of TSLAC data across public networks shall be protected by encryption methods such as Virtual Private Network ("VPN"), Secure Shell File Transfer Protocol ("SFTPS"), or File Transfer Protocol over SSL/TLS ("FTPS").

g) If Vendor is a software manufacturer, then Vendor represents and warrants that it has implemented processes for the protection, detection, remediation, mitigation and timely customer notification of software vulnerabilities associated with its software provided under this agreement.

80. Transition. Upon termination of the Contract for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new agreement and provider. In accordance with this Contract, Vendor shall deliver to TSLAC all completed, or partially completed work and any and all documentation or other products and results of these services.

I. GENERAL TERMS AND CONDITIONS

A. The Vendor will comply with the following parts of the Texas Comptroller of Public Accounts UGMS revised June 2004, located at: http://www.window.state.tx.us/procurement/catrad/ugms.pdf

B. The Vendor will comply with Grant Reform 2 CFR Parts §200 and §3187.

C. *Vendor will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:*

(a) *Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, religion or national origin;*
(b) *Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;*
(c) *Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of disability and the Americans With Disabilities Act of 1990;*
(d) *The Age Discrimination Act of 1974, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age;*
(e) *The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;*
(f) *The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism;*
(g) *§§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;*
(h) *Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;*
(i) *Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and*
(j) *The requirements of any other nondiscrimination statute(s) which may apply to the application.*

D. The Vendor, *if a private entity*, will comply with Federal law pertaining to trafficking in persons. Vendor and its employees may not

1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
2. Procure a commercial sex act during the period of time that the award is in effect; or
3. Use forced labor in the performance of the award or subawards under the award.

E. The Vendor certifies by this contract that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Vendor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid for such purpose, the Vendor shall complete and submit OMB form SF-LLL, Disclosure of Lobbying Activities, in accordance with its instructions. The Vendor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all Vendors shall certify and disclose accordingly, as specified in Title 31 U.S. Code, Sec. 1352.

F. *Vendor's authorized representative certifies to the best of his or her knowledge and belief that neither Vendor nor any of its principals:*

(a) *are presently excluded or disqualified;*
(b) *have been convicted within the preceding three years of any of the offenses listed in 2 CFR Part §180.800(a) or had a civil judgment rendered against it or them for one of those offenses within that time period;*
(c) *are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in 2 CFR §180.800 (a); or*
(d) *have had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default. Where the Vendor is unable to certify to any of the statements in this certification, the Vendor shall attach an explanation to these Terms and Conditions.*

G. Vendor understands that acceptance of funds under this contract acts as acceptance of the authority of the Texas State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by Sub-Contractors through Vendor, and the requirement to cooperate, is included in any sub-grant awarded.

H. The Vendor agrees to main all financial and programmatic records, supporting documents, statistical records, and other records relating to this grant award for three year after the last State Program Report for the Texas LSTA 5-Year Plan 2013-2017, is submitted on December 31, 2018. The Contractor will maintain their records through December 31, 2021.

I. The Vendor agrees to develop or revise, as necessary, any specific written documentation of its current procedures for

(1) collecting and reporting performance measures;
(2) conducting a fixed asset inventory; and or,
(3) any other issues identified in Vendor's internal audit report or grant activities.

Drafts of this procedural documentation will be submitted to TSLAC by dates established mutually between TSLAC and Vendor. TSLAC will provide review and guidance to enable final versions to be approved on or before established deadlines.

J. Vendor may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. Vendor understands that the federal awarding agency, IMLS, reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use; and to authorize others to use, for Federal purposes (2 CFR §200.315).

II. ENFORCEMENT

A. Remedies for noncompliance. If Vendor materially fails to comply with any term of the contract, whether stated in a state or federal statute or regulation, an assurance, in a state plan or application, a notice of award, or elsewhere, TSLAC may take one or more of the following actions, or impose other sanctions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the Vendor, or more severe enforcement action by TSLAC;
2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
3. Wholly or partly suspend or terminate the current contract for the Vendor's program;
4. Withhold further awards for the program; or
5. Take other remedies that may be legally available.

B. Hearings, appeals. In taking an enforcement action, TSLAC will provide the Vendor an opportunity for such hearing, appeal, or other administrative proceeding to which the Vendor is entitled under any statute or regulation applicable to the action involved.

C. Effects of suspension and termination. Costs of Vendor resulting from obligations incurred by the Vendor during a suspension or after termination of an award are not allowable unless TSLAC expressly authorized in the notice of suspension or termination, or subsequently. Other Vendor costs during suspension or after termination that are necessary, and not reasonably avoidable, are allowable if:

1. The costs resulting from obligations that were properly incurred by the Vendor before the effective date of suspension or termination are not in anticipation of it and, in the case of a termination, are non-cancelable; and,
2. The costs would be allowable if the award were not suspended, or expired normally at the end of the funding period in which the termination takes effect.

D. Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude Vendor from being subject to "Debarment and Suspension" under Executive Order 12549 (see UGMS Part III, Subpart C, Sec 35) and state law.

INVOICING INSTRUCTIONS
NON-COMPLIANCE WITH INSTRUCTION MAY DELAY PAYMENT

Please use the following procedure when submitting your invoice:

1. Invoices must be in U.S. dollars
2. Invoices **must** be submitted to the agency at the invoice address shown in Section VIII of this Contract. If you prefer to submit your invoice electronically, **use the following email address:** ap@tsl.texas.gov
3. Your invoice must show vendor name and remit to address.
4. Invoice must be issued to the Texas State Library and Archives Commission (TSLAC).
5. The Contract Number must be on the invoice and packing slips. Invoices submitted without the Contract Number are not in compliance and will result in delays in payment processing.
6. Vendor's Texas Identification Number (if issued) or Federal Tax ID Number must be on the invoice. Vendors who have not been issued a Texas Identification Number should contact the TSLAC Accounting Office at (512) 463-5473 for assistance.
7. Invoice must have description of each item or service, that corresponds with the description on the Contract and be in the order listed on this Contract. Item numbers must be shown to correspond with the item numbers on the Contract.
8. Quantity delivered, unit and total price of each item or service must be shown, and all prices extended on the invoice.
9. All extensions on the invoice must be totaled, and the grand total shown.
10. Discount, if applicable, must be stated, and deducted to arrive at a Net total for the invoice.
11. Final delivery date of merchandise or period of service must be shown on the invoice.

DIRECT DEPOSIT

The Texas State Library and Archives Commission encourage vendors to receive payment by direct deposit. To receive future payments by direct deposit, vendors should download and fill out the New Setup Direct Deposit/Advance Payment Notification, Form 74-207 available at www.txdirectdeposit.org**. Completed forms should be sent to the Agency invoice address listed in Section VIII of the Contract.**

SALES AND USE TAX

The TSLAC, as an agency of the State of Texas, qualifies for exemption from State and Local Sales and Use Taxes pursuant to the provisions of the Texas Limited Sales, Excise, and Use Tax Act. The Vendor may be able to claim exemption from payment of applicable State taxes by complying with such procedures as may be prescribed by the State Comptroller of Public Accounts. Excise Tax Exemption Certificates are available upon request.

FRANCHISE TAX CERTIFICATION

Article 2.45, Texas business Corporation Act, prohibits the awarding of a contract to a corporation that is delinquent in a franchise tax owed to the state under Chapter 171, Tax Code. By delivering merchandise or services on this order, a corporate contractor certifies that is not delinquent in a tax owed to the state under Chapter 171, Tax Code. Delivering merchandise or services on this order while such a tax is delinquent constitutes material breach of the purchase contract. A warrant payable to a corporate contractor will not be processed by the comptroller of public accounts until all corporate indebtedness to the state is retired.

PAYMENT

Payment shall be made in accordance with Texas Prompt Payment Act, Chapter 2251 of Texas Government Code. TSLAC shall not pay any amounts for any purpose to Vendor or any entity, except as expressly provided in the Contract. TSLAC reserves the right to make payments only upon receipt of a correct invoice, including all of the required supporting documentation. TSLAC also reserves the right to refuse payments for invoices that exceed the rates specified in the Contract. The State will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice, whichever is later. Any payments later than 30 days from an uncontested invoice will start to accrue interest.

CERTIFICATION REGARDING NON-PAYMENT OF CHILD SUPPORT

Pursuant to Section 231.006 (d), Family Code, re: child support, the Vendor certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

DELINQUENT TAX/DEBT NOTIFICATION

Payments owed under this contract may be used towards any debt or delinquent taxes owed to the State of Texas by the vendor until debt or taxes are paid in full.

DISPUTE RESOLUTION

Chapter 2260 Government Code, requires a contractor, as a condition precedent to seeking permission to sue the State of Texas under a contract, to first negotiate, then mediate, then take the claim to a contested case hearing before the State Office of Administrative Hearings.

Vendors may request Advance Payment Notification by fax or email. This feature includes notification one business day before the deposit posts to the vendor's bank account. It also provides the amount of the deposit and which agency it came from. Vendors may also receive remittance information with the notification. https://mycpa.cpa.state.tx.us/securitymp1portal/displayLoginUser.do

Document is very large. A copy of the document can be provided by request.

TexQuest Program
STEAM Electronic Educational Resources

Request for Offer # 306-16-8175B

November 13, 2015

Documents are very large. A copy of each document can be provided by request.

TexQuest Program

STEAM Electronic Educational Resources

RFO # 306-16-8175B
December 28, 2015

ProQuest.

Pricing good for purchase commitments through March 28, 2016

Terms and Conditions

1. License Grant. Subject to the terms of this Agreement, ProQuest LLC and its affiliates ("ProQuest") hereby grant to Customer a non-exclusive, non-transferable license (the "License") for Customer and its Authorized Users to access and use the products and services listed on Customer's approved Order Form (the "Service") solely at Customer's principal location and those locations listed on the Additional Sites Schedule. Access and use of the Service is only for the internal, research purposes of Customer and/or its Authorized Users as further described in Exhibit A. Additional Sites may be added upon written notice to ProQuest ~~and payment of additional fees, if applicable~~. Customer does not acquire any intellectual property ownership in the Service or any associated software, systems, documentation, content, other materials and/or improvements made thereto, including improvements based upon customer feedback. All such rights and interests remain in ProQuest and its licensors.

2. Authorized Users. "Authorized User" means only: (a) For Texas K-12 public school libraries and their users: (students, faculty, staff), public/school library combination facilities and their users, Texas Education Service Centers (ESCs) and their staff and employees, parents and families of Texas K12 students, remote users of Texas K12 public school libraries and district/campus personnel (students, faculty, staff), authorized remote users of Public/school library combination facilities, remote use by parents and families of Texas K12 public schools, or other person authorized to use the Service under the terms of a Subscriber's license for the Community. ~~library staff, individual residents of Customer's reasonably defined geographic area served, and walk-in patrons while they are on-site; (b) For schools and other academic institutions: currently enrolled students, faculty, staff, and visiting scholars, as well as walk-in patrons while they are on-site; and (c) For other types of organizations: employees and independent contractors, while performing their work.~~ Authorized Users excludes Customer's corporate affiliates, academic bookstores, and alumni unless those users are expressly included and reflected on the Order Form or Additional Sites Schedule.

3. Secure/Remote Access. All access and use of the Service must be made via a secure network and secure authentication methods. Use of the Service by remote access is allowed unless otherwise stated on the Order Form. Customer will strictly limit any remote access to its Authorized Users through the use of secure methods of user verification. Customer will promptly notify ProQuest if Customer believes security has been compromised. Online posting of passwords, or otherwise enabling access for the benefit of non-subscribing institutions or users, is strictly prohibited.

4. Updates to the Service. ProQuest will announce any substantial modifications of information, databases, materials, capabilities, or services within the Service by email to Customer's representatives who sign up to receive updates. These changes shall be subject to the terms and conditions of this Agreement, and shall not materially alter use of the Service.

5. Supplemental Terms. Some of the content included in the Service has conditions of use applicable solely to such content. Links to content-specific conditions are clearly displayed with the associated content and will not materially alter use of the Service. Where third-party databases and certain special content types are subject to special terms, such terms and conditions shall be clearly referenced on the Order Form.

6. Variations in Content. The content provided as part of the Service is primarily owned and supplied to ProQuest under agreement with third party licensors, and is subject to the continuation and extent of the license granted under such agreements. ProQuest shall have the right, in its reasonable and good faith discretion, to remove or modify materials in the Service because (a) ProQuest's right to distribute such materials lapses, (b) such materials contain errors or could be subject to an infringement or other adverse claim by a third party, or (c) particular content collections have changed due to editorial selection, coordination, or arrangement of materials.

7. Fees and Payments. Customer agrees to pay the fees for the Service shown on the Order Form within 30 days of receipt of ProQuest's invoice unless otherwise specified on the Order Form. Fees are based in part on Customer's population served, Authorized Users and Additional Sites at the time of the order. I~~f any combination of these elements materially increases (*e.g.*, if the Customer acquires a new affiliate), a fee~~

~~increase commensurate with such change may be required before access and use of the Service is provided to or for the benefit of the additional user population, Authorized Users and/or Additional Sites. Firm U.S. Government orders require a valid purchase order and advance payment or payment in accordance with FAR 52.213.2.~~

8. U.S. Government Restricted Rights. Services include materials that are commercial technical data and/or computer databases and/or commercial computer software, as applicable, which were developed exclusively at private expense by ProQuest LLC, 789 E. Eisenhower Parkway, Ann Arbor, MI 48108. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer databases and/or computer software are subject to the limited rights restrictions of DFARS SUBPART 252.227-7202-3 (December 2011) Rights in Computer Software and Computer Software Documentation and/or subject to the restrictions of DFARS 252.227-7019 (Sep 2011) Validation of Asserted Restrictions – Computer Software, as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) Rights in Data-General, FAR 52-227-20(c)(2-3) (December 2007) Rights in Data-SBIR Program and/or subject to the restricted rights provisions of FAR 52.227-15 (December 2007) Representation of Limited Rights Data and Restricted Computer Software and FAR 52.227-19 (Dec 2007) Commercial Computer Software- Restricted Rights, as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurement.

9. Term. Customer's access to a particular Service shall continue for the period on the Order Form, plus any agreed renewal period(s). This Agreement shall continue in force for so long as Customer subscribes to at least one Service. Thereafter, the following survive: Sections 9 and 12-15, and any "PAL" perpetual licenses (subject to all relevant use restrictions and security requirements).

10. Termination for Breach. If a party breaches a material term of this Agreement and does not cure within 30 days from written notice, the other party may immediately terminate this Agreement in whole or as to the affected Service. If this Agreement is terminated in whole or in part for Customer's breach, (a) ProQuest shall disable access to any terminated Service, (b) Customer shall destroy any files, information, data or software derived from any terminated Service in its possession or control, and certify destruction upon request, and (c) ProQuest reserves the right to pursue all available legal remedies. Remedies are limited by Texas Government Code Chapter 2260. Any reference to the contrary is invalid.

11. Remedial Action. Without limiting the above, ProQuest may suspend delivery of the Service if it reasonably determines that Customer's or Authorized User's failure to comply with this Agreement may cause irreparable harm to it or its licensors. If delivery is suspended, ProQuest will work in good faith to restore Customer's access as soon as possible.

12. Service Level. If the Service or content are hosted by ProQuest, ProQuest will use commercially reasonable efforts to provide access to the Service on a continuous 24/7 basis (except for regularly scheduled maintenance) and free from viruses or other harmful software. ProQuest shall not be liable for any failure or delay or interruption in the Service or failure of any equipment or telecommunications resulting from any cause beyond ProQuest's reasonable control. Customer is responsible for providing all required information for account set up and activation, and for its own telecommunications connections and related third-party charges.

13. Limited Warranty and Disclaimer of Warranty. ProQuest warrants that the Service will perform substantially as documented on ProQuest's public websites (the "ProQuest Websites"). EXCEPT AS EXPRESSLY WARRANTED HEREIN, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE." PROQUEST AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE PERTAINING TO: MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ACCURACY, TIMELINESS, CORRECTNESS, RELIABILITY, CURRENCY, OR COMPLETENESS OF THE SERVICE OR ANY INFORMATION OR RESULTS OBTAINED THROUGH THE SERVICE, EVEN IF ASSISTED BY PROQUEST. PROQUEST SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR DETERMINING THE COMPATIBILITY OF ANY HARDWARE OR SOFTWARE NOT SUPPLIED BY PROQUEST WITH THE SERVICE AND PROVIDES NO WARRANTY WITH RESPECT TO THE OPERATION OF SUCH HARDWARE OR SOFTWARE WITH THE SERVICE.

14. Limitation of Liability. THE MAXIMUM LIABILITY OF PROQUEST AND ITS LICENSORS ARISING OUT OF ANY CLAIM RELATED TO THE SERVICE OR THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES RECEIVED BY PROQUEST FROM CUSTOMER IN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL PROQUEST OR ITS LICENSORS BE LIABLE TO CUSTOMER OR ITS AUTHORIZED USERS FOR (a) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES; OR (b) ANY CLAIM

RELATED TO CUSTOMER'S OR ITS AUTHORIZED USERS' USE OF COVER IMAGES OR USER-GENERATED CONTENT PROVIDED AS PART OF THE SERVICE; OR (c) UNAUTHORIZED USE OF THE SERVICE.

15. Place. ProQuest's principal place of business, where this contract is formed and all services will be deemed performed, is 789 E. Eisenhower Pkwy, Ann Arbor, MI 48108. This contract has been created by TSLAC in the State of Texas.

16. Entire Agreement. This Agreement consists of the Order Form, these Terms and Conditions, and Exhibit A, and constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes all previous and contemporaneous agreements between the parties with respect to the same subject matter and may not be amended, except in a writing signed by the parties. The terms of Customer's purchase orders, if any, are for Customer's convenience and do not supersede any term or condition of this Agreement.

Exhibit A: Permitted Uses

1. Online Research Services. Services designed to facilitate online research may be used for Customer's internal research or educational purposes as outlined below provided that doing so does not violate an express provision of this Agreement:
    a) Research and Analysis. Customer and its Authorized Users are permitted to display and use reasonable portions of information contained in the Service for educational or research purposes, including illustration, explanation, example, comment, criticism, teaching, or analysis.
    b) Digital and Print Copies. Customer and its Authorized Users may download or create printouts of a reasonable portion of articles or other works represented in the Service (i) for its own internal or personal use as allowed under the doctrines of "fair use" and "fair dealing; (ii) when required by law for use in legal proceedings or (iii) to furnish such information to a third party for the purpose of, or in anticipation of, regulatory approval or purpose provided that the recipient are advised that the copies are confidential and not for redistribution. All downloading, printing and/or electronic storage of materials retrieved through the Service must be retrieved directly from the on-line system for each and every print or digital copy.
    c) Electronic Reserves, Coursepacks, and Intranet Use. Provided that Customer does not circumvent any features or functionality of the Service, Customer may include durable links to articles or other works (or portions thereof) contained in the Service in electronic reserves systems, online course packs and/or intranet sites so long as access to such materials are limited to Authorized Users.
    d) Fair Use/Fair Dealing. Customer and its Authorized Users may use the materials contained within the Service consistent with the doctrines of "fair use" or "fair dealing" as defined under the laws of the United States or England, respectively.
    e) Academic Institutions, Schools, and Public Libraries. If Customer is an academic institution, school, or public library:
        i. Interlibrary Loan (ILL). Library Customer may loan digital or print copies of materials retrieved from the Service to other libraries, provided that (i) loans are not done in a manner or magnitude that would replace the receiving library's own subscription to the Service or purchase of the underlying work (*e.g.*, newspaper, magazine, book), (ii) Customer complies with any special terms governing specific content or licensors as described in this Agreement, (iii) with respect to e-books, copying is limited to small portions of a book, and (iv) Customer complies with all laws and regulations regarding ILL.
        ii. Scholarly Sharing. Customer and its Authorized Users may provide to a third party colleague minimal, insubstantial amounts of materials retrieved from the Service for personal use or scholarly, educational research use in hard copy or electronically, provided that in no case any such sharing is done in a manner or magnitude as to act as a replacement for the recipient's or recipient educational institution's own subscription to either the Service or the purchase of the underlying work.
2. MARC Records. MARC records may be placed in Customer's online public access catalog (OPAC) or shared online catalog (*e.g.*, WorldCat) unless otherwise specified on the Order Form with respect to a particular Service.
3. Scholar/Researcher Profiles. The data contained within scholar profiles are for use in facilitating research and collaboration amongst colleagues. Neither Customer nor its Authorized Users may export or otherwise exploit the scholar profiles for mass mailings or similar marketing purposes.
4. Electronic Resource Discovery, Access, and Management. For electronic resource discovery (*e.g.*, Summon), access and/or management services (*e.g.*, Intota), the Customer reserves all right, title and interest in all Customer specific data it contributes to the Service (which may include but is not limited to Customer created metadata, bibliographic information, holdings and circulation data) and grants ProQuest permission to use such data for the limited purpose of operating and improving the Service and such information may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party without Customer's permission. Provided that such access, use, and/or sharing does not violate an express provision of this Agreement, Customer and its Authorized Users are permitted to: (a) access the Service and information derived from the Service in order to discover, manage and provide access to library resources owned or licensed by Customer, (b) create, store and retain any reports and lists delivered by the Service, (c) share data about Customer's own library holdings that is retrieved from such Service with third party applications, so long as prior written notice is provided to ProQuest and (d) display metadata, bibliographic and holdings information in the library catalog available on Customer's library website.
5. Library Catalog Enrichment Service. For library catalog enrichment Services (*e.g.*, Syndetics), Customer may use the enrichment elements for the sole purpose of augmenting Customer's own library OPAC or website.

Customer may not convert Service metadata records into MARC format, nor distribute or display the enrichment elements in any third party applications, catalogs or websites.

6. Purchased Content. For perpetual archive licenses ("PAL") (as specified on the ProQuest Websites or Order Form), Customer pays a one-time fee for a perpetual license to the designated materials (the "Purchased Content"), and an annual "Continuing Service Fee."
   a) Perpetual License. The License to Purchased Content and any updates Customer receives is perpetual, and may only be revoked if Customer materially breaches this Agreement, or if the licensed materials contain errors or could be subject to an infringement or other adverse claim by a third party.
   b) Continuing Services. In consideration of the Continuing Service Fee, ProQuest will provide Customer and its Authorized Users with online access to the Purchased Content, plus any included updates, on a proprietary platform designed to enhance the research experience (a "ProQuest Platform"). ProQuest will maintain systems and technology that help Customer comply with use restrictions and security standards required by ProQuest's licensors.
   c) File Delivery. If Customer loses the ability to access its Purchased Content online through ProQuest (*e.g.,* if ProQuest discontinues online access services), or if the Purchased Content is otherwise eligible for local loading, Customer may obtain digital copies upon certifying that it will secure and restrict use of the Purchased Content as contemplated under this Agreement, using systems and technology at least as protective as ProQuest's. File transfer costs, if any, are Customer's responsibility.
   d) Data Mining. Subject to any content-specific restrictions, Customer and its Authorized Users may extract and compile data from locally-loaded copies of the Purchased Content solely for Customer's teaching, learning, and research purposes.
7. Patron Driven Acquisition ("PDA"). For certain Services, Customer may elect to have user activity trigger the purchase of content. Purchase preferences and Service eligibility for the PDA model are described on the ProQuest Websites.
8. Analytics. Some Services contain library collection analysis capabilities related to library holdings, or functionality that allows Authorized Users to create reports, lists, or alerts. Customer and Authorized Users may create, download, store and retain any such analytics or lists delivered by the Service. ProQuest may use library holdings and other information in the Service for comparison and metrics purposes in order to better understand the Customer's needs.
9. Restrictions. Except as expressly permitted above, Customer and its Authorized Users shall not:
   a) Translate, reverse engineer, disassemble, decompile, discover, or modify ProQuest's software;
   b) Remove any copyright and other proprietary notices placed upon the Service or any materials retrieved from the Service by ProQuest or its licensors;
   c) Circumvent any use limitation or protection device contained in or placed upon the Service or any materials retrieved from the Service;
   d) Use the Service to execute denial of service attacks;
   e) Perform automated searches against ProQuest's systems (except for non-burdensome federated search services), including automated "bots," link checkers or other scripts;
   f) Provide access to or use of the Services by or for the benefit of any unauthorized school, library, organization, or user;
   g) Publish, broadcast, sell, use or provide access to the Service or any materials retrieved from the Service in any manner that will infringe the copyright or other proprietary rights of ProQuest or its licensors;
   h) Use the Service to create products or perform services which compete or interfere with those of ProQuest or its licensors;
   i) Text mine, data mine or harvest metadata from the Service;
   j) Communicate or redistribute materials retrieved from the Service; or
   k) Download all or parts of the Service in a systematic or regular manner or so as to create a collection of materials comprising all or a material subset of the Service, in any form.