





May 4, 2016

ATTN: Russlene Waukeshon  
Texas State Library and Archives Commission (TSLAC)  
1201 Brazos Street  
Austin, TX 78701

RE: Renewal of Contract Number: 306-14-8016

Dear Ms. Waukeshon:

We are pleased to provide this one-year renewal letter as called for in Article VI of Contract Number 306-14-8016. The renewal term of service is October 1, 2016 through September 30, 2017.

This renewal provides access to HeritageQuest Online to TSLAC on the same terms, conditions, and specifications of the original contract referenced above. Per the terms of the contract, the price for the renewal period is \$ 355,201.35 and does not exceed 4% over the prior year price.

The renewal period will be invoiced quarterly as follows:

- Invoice 1 will be issued for a partial payment of \$88,800.34 on October 1, 2016, for services rendered October 1, 2016 through December 31, 2016.
- Invoice 2 will be issued for a partial payment of \$88,800.34 on January 1, 2017, for services rendered January 1, 2017 through March 31, 2017.
- Invoice 3 will be issued for a partial payment of \$88,800.34 on April 1, 2017, for services rendered April 1, 2017 through June 30, 2017.
- Invoice 4 will be issued for a partial payment of \$88,800.34 on July 1, 2017, for services rendered July 1, 2017 through September 30, 2017.

Kind regards,

A handwritten signature in blue ink that reads "Cathleen May".

Cathleen May  
Director, Global Bids and Contracts  
ProQuest LLC  
Direct Phone: 734.255.4574  
[Bids-and-Contracts@proquest.com](mailto:Bids-and-Contracts@proquest.com)  
[cathleen.may@proquest.com](mailto:cathleen.may@proquest.com)

**TEXAS STATE LIBRARY AND ARCHIVES COMMISSION  
CONTRACT FOR SERVICES  
Amendment 3 to Contract # 306-14-8016**

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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.

Except as amended below, all terms of the Original Contract between TSLAC and ProQuest, LLC, dated September 25, 2014, will remain in effect.

**I. CONTRACTING PARTIES**

**The Receiving Agency: Texas State Library and Archives Commission (TSLAC)**

Russlene Waukechon will serve as Contract Manager and primary contact for TSLAC. TSLAC may reassign Contract Manager's 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. Chris Kaul will serve 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**

Services provided to the TexShare program in this Contract include the annual continuing service fees to HeritageQuest Online.

**III. TERM OF CONTRACT**

The term of service under this Amendment 3 will begin October 1, 2016 and will conclude no later than September 30, 2017, unless otherwise terminated earlier by either party.

Amendment 3 is the third of four optional annual contract renewals per the terms of the Original Contract. Contract cannot be extended beyond September 30, 2018.

**IV. SOURCE OF FUNDS**

Grant Number: LS-00-16-0044-16 - FFY 2016 | CFDA: 45.310 - Grants to States | Institute of Museum and Library Services  
Percentage of total costs of the program which will be financed with Federal money: 100%  
Dollar Amount of Federal funds for this project: \$355,201.35

Percentage of total costs of the program which will be financed with non-Federal sources: 0%  
Dollar amount of non-Federal sources for the project: \$0.00

**V. PAYMENT FOR SERVICES**

**Vendor must submit invoices for all items delivered to and accepted by TSLAC.** Invoices must contain the Vendor's legal name, Texas Identification Number (TIN), remittance address (city, state, zip code), telephone number, TSLAC's full name, delivery address (see below), current Contract Number, each itemized service provided with the dates of service, and the total dollar amount.

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

*Appendix A of this Amendment 3 includes the invoice schedule between TSLAC and 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 payable to TSLAC within thirty (30) days of receipt of invoices.

Vendor must place the following tracking number on each invoice for the time periods specified below.

**Contract Number for Term of October 1, 2016 – September 30, 2017: 306-17-8017**

**TEXAS STATE LIBRARY AND ARCHIVES COMMISSION  
CONTRACT FOR SERVICES  
Amendment 3 to Contract # 306-14-8016**

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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: [invoices.accounting@tsl.texas.gov](mailto:invoices.accounting@tsl.texas.gov)

**VII. CONTRACT AMOUNT**

Per Appendix A of this Contract, the renewal amount for the services specified in Section II for the period of October 1, 2016 – September 30, 2017 is three hundred fifty-five two hundred one and 35/100 dollars (\$355,201.35).

**VIII. TERMS AND CONDITIONS**

TSLAC's Terms and Conditions are those listed in Appendix B. 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 notified of any changes.

8. Prohibited Use of Appropriated or other Funds Under Control of State Agency; Lobbying Updated

LSTA Terms and Conditions are those listed in Appendix C and are included for all intents and purposes. LSTA Terms and Conditions cannot be changed.

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION  
CONTRACT FOR SERVICES  
Amendment 3 to Contract # 306-14-8016

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

PERFORMING VENDOR

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

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

Mark Smith 8/26/16  
Date  
Mark Smith  
Director & Librarian

Christopher Kaul 9-21-16  
Date  
~~Cathleen L. May~~  
Christopher KAUL

Approved by:  
Donna Osborne 8/26/16  
Date  
Donna Osborne  
Chief Operations and Fiscal Officer

Director, Bids and Contracts  
Title

Deborah Littrell 8/30/16  
Date  
Deborah Littrell  
Director, Library Development and  
Networking

Russlene Waukechon 8/26/16  
Date  
Russlene Waukechon  
TexShare Coordinator

Pam Rodriguez, CTPM 8/30/2016  
Date  
Pam Rodriguez, CTPM  
Senior Purchaser

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION  
CONTRACT FOR SERVICES  
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RECEIVING AGENCY

PERFORMING VENDOR

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

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

*Mark Smith*

*8/26/16*

Mark Smith  
Director & Librarian

Date

Date

Approved by:

*Donna Osborne* *8/26/16*

Donna Osborne  
Chief Operations and Fiscal Officer

Date

Director, Bids and Contracts  
Title

*Deborah Littrell* *8/30/16*

Deborah Littrell  
Director, Library Development and  
Networking

Date

*Russlene Waukechon* *8/26/16*

Russlene Waukechon  
TexShare Coordinator

Date

*P. Rodriguez* *8/30/2016*

Pam Rodriguez, CTPM  
Senior Purchaser

Date

**APPENDIX A  
VENDOR'S LETTER**

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Austin, TX 78701

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Cathleen May  
Director, Global Bids and Contracts  
ProQuest LLC  
Direct Phone: 734.255.4574  
[Bids-and-Contracts@proquest.com](mailto:Bids-and-Contracts@proquest.com)  
[cathleen.may@proquest.com](mailto:cathleen.may@proquest.com)

**APPENDIX B**  
**Texas State Library and Archives Commission**  
**Terms & Conditions**

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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 solicitation lists. Under these terms and conditions, a Purchase Order is also considered a contract between TSLAC and the Vendor.

Contracts awarded by TSLAC shall be governed by and construed in accordance with the laws of the State of Texas. Any legal action concerning this Contract must be brought in accordance with the dispute resolution process provided in Texas Government Code § 2260 and may only be filed in a Texas State Court of appropriate jurisdiction in Travis County, Texas. Nothing in this Contract or its Appendices shall be construed to waive the State's sovereign immunity. 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 <https://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 terminated as of the date that the funding expires, and the State will have no further obligation to make any payments.
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 or any resulting Contract is prohibited from use to pay or employ a lobbyist. Refer to Texas Government Code §§ 556.005 or 556.008. *[Updated 08/10/2016]*
9. **Public Information Act.** Information, documentation, and other material in connection with this Solicitation or contract may be subject to public disclosure pursuant to 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.

## Texas State Library and Archives Commission Terms & Conditions

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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, Unless otherwise specified, items shall be new and unused and of current production.
14. **Delivery.**
  - a. Delivery shall be made during normal business hours (7:30am-4:30pm, CT), unless prior approval or specific instructions have been provided from the TSLAC Purchasing Department.
  - b. No substitutions are 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 or completion of services. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the TSLAC to purchase supplies or services 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 § 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 the Texas Government Code § 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 § 2260, Subchapter B, of the. 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 the Texas Government Code § 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 § 2260, Subchapter C. The contested case process provided in the Texas Government Code § 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 the Texas Government Code § 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.

**Texas State Library and Archives Commission**  
**Terms & Conditions**

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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 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 Texas Government Code, § 2155.004 of 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 defend, indemnify, and hold harmless the State of Texas and Customers, ITS OFFICERS, AND EMPLOYEES, AND VENDORS, FROM ANY AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEY'S FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF VENDOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF VENDOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. VENDOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUEST BY TEXAS STATE LIBRARY AND ARCHIVES COMMISSION (TSLAC).
- THIS PARAGRAPH IS NOTE INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TSLAC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TSLAC OR ITS EMPLOYEES. 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.
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 Solicitation Response, 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, INCLUDING ATTORNEY'S 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.

## Texas State Library and Archives Commission Terms & Conditions

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- 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 is 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, Texas Business & Commerce. Code § 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.

**36. Cancellation.** The cancellation of the agreement, under any circumstances whatsoever, shall not affect 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.

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- 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.

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- 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.
- 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 of. 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 statute 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. TSLAC 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.
- 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.

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- 59. Supporting Documents; Right to Audit; Independent Audits.** Pursuant to Texas Government Code § 2262.154, 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 for a period of seven (7) 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 documents and other information related to the "Services" as defined in this Contract. Vendor and the subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit. Vendor must retain all work and other supporting documents pertaining to this Contract, for purposes of inspecting, monitoring, auditing, or evaluating by TSLAC and any authorized agency of the State of Texas, including an investigation or audit by the State Auditor. *[Updated on 08/10/2016]*
- 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 on 08/10/2016]*
- 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 as required by the Texas Workers' Compensation Act and Employers' Liability covering all personnel who will provide services under the Contract with the following limits:
    - \$500,000 policy
    - Each Accident limit: \$100,000 bodily injury;
    - \$100,000 bodily injury by disease;
      - Containing a waiver of subrogation as to the Texas State Library & Archives Commission;
  - b. Commercial General Liability Insurance, including Independent Contractor's Liability and blanket Contractual Liability Covering, but not limited to, the liability assumed under the indemnification provisions of this Contract; the CGL policy shall be written on an occurrence basis and include endorsement CG2503 Amendment of Aggregate Limits of Insurance (per project) or its equivalent. Occurrence based:
    - Each Occurrence limit: \$1,000,000
    - General Aggregate limit: \$1,000,000
    - Medical Expense each person: \$5,000
    - Personal Injury (including death) & Advertising Liability: \$500,000
    - Bodily injury and Property Damage: \$500,000
    - Products/Completed Operations Aggregate Limit: \$1,000,000
    - 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. Comprehensive Automobile Liability Insurance; covering owned, hired, and non-owned vehicles, as well as loading and unloading hazards with a minimum combined single limit for bodily injury (including death) and property damage: Each occurrence limit: \$500,000
  - e. Employers Liability: Each Accident - \$1,000,000
  - f. Disease – Each Employee: \$1,000,000
  - g. 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, material change, or non-renewal except upon at least thirty (30) days prior written notice to TSLAC.

Vendor further represents and warrants that all policies, except for Workers' Compensation and Employer's Liability Insurance, shall be endorsed to name the Texas State Library and Archives Commission as an additional insured and Loss Payee and shall be considered primary for all claims. 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 and at no expense. *[Updated 08/10/2016]*

**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.

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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, Section 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.

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- 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.**

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, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE 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. **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 and 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.
65. **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 hard copy of this report, as well as an e-mailed copy. The TSLAC will provide a sample of the Vendor Performance Report upon request. More information can be found at [http://comptroller.texas.gov/procurement/prog/vendor\\_performance/vendor-performance-faq/](http://comptroller.texas.gov/procurement/prog/vendor_performance/vendor-performance-faq/).
66. **Change Management.** Vendor shall assign only qualified personnel to this Contract. Vendor, in its 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.
67. **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
68. **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.

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- 69. 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, § 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.
- 70. Independent Vendor.** Vendor or Vendor's employees, representatives, agents, and any subcontractors shall serve as an independent Contractor 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.
- 71. 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.
- 72. 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 Texas Government Code § 2155.444 of the. This term is not applicable when Federal funds are used.
- 73. 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.*).
- 74. Recovered Materials.** Contractors must comply with Section 6002 of the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items that contain the highest percentage of recovered materials practicable, as designated in the guidelines of the Environmental Protection Agency (EPA) at 40 Code of Federal Regulations (CFR) Part 247.
- 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.
- 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/>.
- 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](mailto: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.

## Texas State Library and Archives Commission Terms & Conditions

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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 1<sup>st</sup> 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:

## Texas State Library and Archives Commission Terms & Conditions

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- 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.
- 81. E-Verify.** By entering into a Contract, the Vendor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security’s E-Verify system to determine the eligibility of:
- a) All persons employed to perform duties within Texas, during the Term of the Contract; and
  - b) All persons (including subcontractors) assigned by the Vendor to perform work pursuant to the Contract, within the United States of America.

The Vendor shall provide, upon request of the Texas State Library & Archives Commission, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Vendor, and Vendor’s subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the State, with no prior notification. The Vendor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated Contract.

**APPENDIX C**  
**Texas State Library and Archives Commission**  
**Library Services and Technology (LSTA) - Terms & Conditions**

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**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 have 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 Part § 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.

## Texas State Library and Archives Commission Terms & Conditions

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- 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**

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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 Payment Section of this Contract. If you prefer to submit your invoice electronically, **use the following email address:** [invoices.accounting@tsl.texas.gov](mailto:invoices.accounting@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 Tracking 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 purchase order. 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](http://www.txdirectdeposit.org). Completed forms should be sent to the Agency invoice address listed in Payment Section of this 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>

**STATE OF TEXAS  
PURCHASE ORDER**

<b>1. Agency Name &amp; No.</b> <b>TEXAS STATE LIBRARY &amp; ARCHIVES COMMISSION</b> 306 Tax Exempt agency of the Texas State Government		<b>4. Purchase Order No.</b> 306-16-8016	<b>12. HUB:</b> N/A	<b>13. Order Type:</b> Service
<b>2. Agency Billing Address</b> **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		<b>5. PCC</b>	<b>14. Vendor Identification No:</b> [REDACTED]	
*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."		<b>6. Current Document No.</b> DT-9	<b>15. Vendor Address:</b> ProQuest L L C 789 E. Eisenhower Pkwy Ann Arbor, MI 48108	
		<b>7. Document (order) amt</b> \$341,539.76	<b>16. Vendor Contact Info:</b> Cathleen L. May <b>Phone:</b> (734) 255-4574 <b>Fax:</b> <b>Email:</b> Cathleen.May@proquest.com	
<b>3. Destination of goods or service</b> FOB Destination Receiving Dock, Room G-007 Texas State Library & Archives Commission 1201 Brazos Street Austin, TX 78701		<b>8. REF DOC</b>	<b>9. Service Period or Expected Delivery Date:</b> 10/1/2015 - 9/30/2016	
		<b>10. Agency Contact:</b> Renee Pogue <b>Email:</b> purchasing@tsl.texas.gov		<b>Phone:</b> (512) 463-5488 <b>Fax:</b> (512) 475-3393
		<b>11. TSLAC Project Contact:</b> Russlene Waukechon <b>Email:</b> rwaukechon@tsl.texas.gov		<b>Phone:</b> (512) 463-7402

**17. Description**

Database for the Genealogy content within Heritage Quest Online

Invoices will be split as follows per the contract:

Invoice 1 - partial payment of \$85,384.94 on October 1, 2015 for services rendered October 1, 2015 - December 31, 2015.

Invoice 2 - partial payment of \$85,384.94 on January 1, 2016 for services rendered January 1, 2016 - March 31, 2016.

Invoice 3 - partial payment of \$85,384.94 on April 1, 2016 for services rendered April 1, 2016 - June 30, 2016.

Invoice 4 - partial payment of \$85,384.94 on July 1, 2016 for services rendered July 1, 2016 - September 30, 2016.

Grant Number: LS-00-15-0044-15 – FFY 2015 | CFDA: 45.310 – Grants to States | Institute of Museum and Library Services

18. SFX	INDEX	AY	COBJ	AOBJ	AMOUNT	INVOICE NO.
001	17942	16	7276	7104	\$341,539.76	
19. Line No	20. Goods & Service	21. NIGP Code	22. Qty	23. Units	24. Unit Price	25. Extended Amt
1.	Database for the Genealogy content within HeritageQuest Online	956-35	1	Year(s)	\$341,539.76	\$341,539.76

**INTERNAL PO ONLY**

**Grand Total** \$341,539.76

**26. Legal Cites:** Purchase made for a library or resource-sharing program operated by the Texas State Library & Archives Commission as defined by the Texas Government Code, Title 10, Section 2155.139 (1)(B)

**27. Division Tracking Number:** LDN 16-031

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.

<b>28. Approval Signature</b> 	<b>Date</b> 8-10-2015	<b>29. Vendor Signature</b>	<b>Date</b>
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April 21, 2015

ATTN: Russlene Waukeshon  
Texas State Library and Archives Commission (TSLAC)  
1201 Brazos Street  
Austin, TX 78701

RE: Renewal of Contract Number: 306-14-8016

Dear Ms. Waukeshon:

We are pleased to provide this one-year renewal letter as called for in Article VI of Contract Number 306-14-8016. The renewal term of service is October 1, 2015 through September 30, 2016.

This renewal provides access to HeritageQuest Online to TSLAC on the same terms, conditions, and specifications of the original contract referenced above. Per the terms of the contract, the price for the renewal period is \$341,539.76 and does not exceed 3% over the prior year price.

The renewal period will be invoiced quarterly as follows:

- Invoice 1 will be issued for a partial payment of \$85,384.94 on October 1, 2015, for services rendered October 1, 2015 through December 31, 2015.
- Invoice 2 will be issued for a partial payment of \$85,384.94 on January 1, 2016, for services rendered January 1, 2016 through March 31, 2016.
- Invoice 3 will be issued for a partial payment of \$85,384.94 on April 1, 2016, for services rendered April 1, 2016 through June 30, 2016.
- Invoice 4 will be issued for a partial payment of \$85,384.94 on July 1, 2016, for services rendered July 1, 2016 through September 30, 2016.

Best regards,

Cathleen May  
Director, Global Bids and Contracts  
ProQuest LLC  
Direct Phone: (928) 963-0886  
[cathleen.may@proquest.com](mailto:cathleen.may@proquest.com)

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION  
CONTRACT FOR SERVICES  
AMENDMENT 2 TO CONTRACT: 306-14-8016

**I. Contracting Parties**

The Receiving Agency: Texas State Library and Archives Commission (TSLAC)

The Performing Vendor: ProQuest LLC

Except as amended below, all terms of the original contract between TSLAC and ProQuest, dated September 25, 2014, will remain in effect.

**III. Term of Contract**

The term of service for Heritage Quest will begin October 1, 2015 and will conclude no later than September 30, 2016, unless otherwise terminated earlier by either party.

Amendment 2 is the second of four optional annual contract renewals, per the terms of the original contract.

**IV. Source of Funds**

Funding for this Amendment is outlined below.

- Percentage of total costs of the contract which will be financed with General Revenue appropriations from Texas Legislature: 0% and \$0.00
- Percentage and dollar amount of total costs of the contract, with all Attachments and Amendments, which will be financed with Federal money: 100% & \$341,539.76
- Percentage and dollar amount of total costs of the contract that will be financed with non-government sources: 0% & \$0.00
- LSTA#: LS-00-15-0044-15 – FFY 2015 – CFDA 45.310 – Grants to States – Institute of Museum and Library Services

**VI. Payment for Services**

Vendor must place the following tracking number on each invoice issued under this Amendment. Tracking numbers for future renewals will be assigned in the documentation for the renewal.

Current Term: October 1, 2015 – September 30, 2016 – Tracking Number: 306-16-8016

Invoice 1 will be issued for a partial payment of \$85,384.94 on October 1, 2015, for services rendered October 1, 2015 through December 31, 2015.

Invoice 2 will be issued for a partial payment of \$85,384.94 on January 1, 2016, for services rendered January 1, 2016 through March 31, 2016.

Invoice3 will be issued for a partial payment of \$85,384.94 on April 1, 2016, for services rendered April 1, 2016 through June 30, 2016.

Invoice 4 will be issued for a partial payment of \$85,384.94 on July 1, 2016, for services rendered July 1, 2016 through September 30, 2016.

Invoices for services must contain the tracking 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  
PO Box 12516  
Austin, Texas 78711

OR

[AP@tsl.texas.gov](mailto:AP@tsl.texas.gov)

**VII. Contract Amount**

Per Attachment A of this Amendment, the renewal amount for Heritage Quest for the period of October 1, 2015 thru September 30, 2016, is \$341,539.76

**IX. Terms and Conditions**

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|--|--|
| 1. Notices   | 56. Termination for Convenience                              |
| 2. Debarred Vendors List   | 57. Termination Remedies                                     |
| 3. Duty to Disclose  | 55. Survival Terms   |
| 7. No Other Benefits   | 59. Supporting Documents; Right to Audit; Independent Audits |
| 8. Prohibited Use of Appropriated or Other Funds Under Control of State Agency; Lobbying | 63. Workers' Compensation Insurance Coverage                 |
| 10. Confidentiality and Open Records   | 64. Workers Compensation & Employers Liability               |
| 12. No Conflicts   | 73. Texas Bidder   |
| 13. Specifications   | 75. Recovered Materials                                      |
| 15. Permits, Licenses  | 75. TSLAC Anti-Fraud Policy                                  |
| 17. Control; Ownership; Legal Proceedings  | 78. Provision for Direct Deposit                             |
| 18. Time Limits  | 79. Disclosure of Security Breach                            |
| 26. Liability for Taxes  | 80. Information Security Requirements                        |
| 27. HUBS   | 81. E-Verify   |
| 32. Infringements  |  |
| 53. Drug Free Workplace  |  |

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 bidder.

Receiving Agency

Performing Agency

Texas State Library and Archives Commission  
P.O. Box 12927  
Austin, Texas 78711-2927

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

*E Seidenberg*

Edward Seidenberg  
Assistant State Librarian

*Cathleen L. May*

Cathleen L. May  
Director, Bids and Contracts

*08-03-2015*

Date

*7/15/15*

Date

Approved:

*Donna Osborne 7/31/15*  
Donna Osborne  
Chief Fiscal Officer

*Deborah Littrell 7/21/15*  
Deborah Littrell  
Director of Library Development and Networking

*Russlene Waukechon 7/21/15*  
Russlene Waukechon  
Contract Manager

*Renee Pogue 8/5/15*  
Renee Pogue, CTPM, CTCM  
Purchaser IV

Attachment A



April 21, 2015

ATTN: Russlene Waukeshon  
Texas State Library and Archives Commission (TSLAC)  
1201 Brazos Street  
Austin, TX 78701

RE: Renewal of Contract Number: 306-14-8016

Dear Ms. Waukeshon:

We are pleased to provide this one-year renewal letter as called for in Article VI of Contract Number 306-14-8016. The renewal term of service is October 1, 2015 through September 30, 2016.

This renewal provides access to HeritageQuest Online to TSLAC on the same terms, conditions, and specifications of the original contract referenced above. Per the terms of the contract, the price for the renewal period is \$341,539.76 and does not exceed 3% over the prior year price.

The renewal period will be invoiced quarterly as follows:

- Invoice 1 will be issued for a partial payment of \$85,384.94 on October 1, 2015, for services rendered October 1, 2015 through December 31, 2015.
- Invoice 2 will be issued for a partial payment of \$85,384.94 on January 1, 2016, for services rendered January 1, 2016 through March 31, 2016.
- Invoice 3 will be issued for a partial payment of \$85,384.94 on April 1, 2016, for services rendered April 1, 2016 through June 30, 2016.
- Invoice 4 will be issued for a partial payment of \$85,384.94 on July 1, 2016, for services rendered July 1, 2016 through September 30, 2016.

Best regards,

A handwritten signature in cursive script that reads "Cathleen May". The signature is written in black ink and is positioned above the typed name and contact information.

Cathleen May  
Director, Global Bids and Contracts  
ProQuest LLC  
Direct Phone: (928) 963-0886  
[cathleen.may@proquest.com](mailto:cathleen.may@proquest.com)

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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, Request for Proposals, and Vendor's Response to Request to Proposals.

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.
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 by Section 556.005 or Section 556.008 of the Texas Government Code.
9. **Public Information Act.** Information, documentation, and other material in connection with this RFP or contract may be subject to public disclosure pursuant to Chapter 552.021 of the Texas Government Code (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. 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.
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

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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 working 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 Dept.
  - 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.

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- 20. 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.
- 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 Chapter 2260, Texas Government Code, 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 Chapter 2260, subchapter B, of the Texas Government Code. 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 Chapter 2260, subchapter C, of the Texas Government Code. The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code 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 Chapter 2155.004 of the Texas Government Code, the Vendor has not received compensation for participation in the preparation of the specifications for this RFP or contract.
- 24. 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 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 Section 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 Chapter 2155.004 of the Texas Government Code, 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 SUTIS, 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

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WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 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 Sections 403.055, 403.0551, 2252.903 of the Texas Government Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State.
- 30. Executive Head of a State Agency.** Pursuant to §669.003, Government Code, 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 Proposal, 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 Auditors 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 Auditors 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, INCLUDING 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 is non-infringing.
- 33. Patents and Copyrights.** The Vendor agrees to protect the State of Texas from claims involving infringement of patents or copyrights.
- 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

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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.

- 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.** Notwithstanding anything to the contract in Sections 29 and Section 41, Vendor retains all ownership, title, and intellectual property rights in Vendor's content, materials and services provided under this contract, all of which were in existence prior to the commencement of this contract and none of which were developed specifically for TSLAC.
- 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

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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.
- 50. Ethics.** Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Chapter 2155.003 of the Texas Government Code. 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 RFP 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.

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- 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 RFP 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.** The TSLAC reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if the TSLAC determines that such termination is in the best interest of the state. In the event of such a termination, the Vendor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TSLAC shall be liable for payments for any goods and services ordered from the Respondent before the termination date.
- 56. 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.

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- 57. 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.
- 58. 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 an 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 RFP. 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 Section 2262.003 of the Texas Government Code, 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 Section 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
- 59. 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.
- 60. 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 until December 31, 2021.
- 61. 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.

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**62. 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, Section 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, Section 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;

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- 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, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE 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.
- 63. 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

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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.

- 64. 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 and 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.
- 65. Vendor Performance.** The TSLAC may monitor the performance of the Contract issued under this Bid. All services and goods under the Contract shall be performed at an acceptable quality level 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.

State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the commission or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exemption from CPA/TPASS procurement rules and procedures.

Past Performance: A Vendor's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Vendors may fail this selection criterion for any of the following conditions:

- 1) A score of less than 90% in the Vendor Performance System,
- 2) Currently under a Corrective Action Plan through the CPA,
- 3) Having repeated negative Vendor Performance Reports for the same reason,
- 4) Having purchase orders that have been cancelled in the previous 12 months for non-performances (i.e. late delivery, etc.).

Vendor performance information is located on the CPA website at:

[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/)

- 66. Change Management.** Vendor shall assign only qualified personnel to this Contract. Vendor, in its 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.
- 67. 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.
- 68. 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

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ordering and tracking purposes consistent with this Contract provided such Purchase Order Change Notices reference the Contract.

- 69. 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 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 RFP. 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 RFP, 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 RFP.
- 70. Independent Vendor.** Vendor or Vendor's employees, representatives, agents, and any subcontractors shall serve as an independent contracting in providing services under any PO. 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.
- 71. 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.
- 72. 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 Section 2155.444 of the Texas Government Code. This term is not applicable when Federal funds are used.
- 73. 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.*).
- 74. Recovered Materials.** Contractors must comply with Section 6002 of the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items that contain the highest percentage of recovered materials practicable, as designated in the guidelines of the Environmental Protection Agency (EPA) at 40 Code of Federal Regulations (CFR) Part 247.
- 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 is 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/>.
- 77. Provision for Direct Deposit.** The electronic funds transfer ("EFT") provisions of Texas law were codified in Section 403.016 of the Texas Government Code. 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.

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- 78. Disclosure of Security Breach.** Vendor shall provide notice to the Purchasing Department, Purchasing Manager at (512) 936-2774 or [purchasing@tsl.texas.gov](mailto: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 Manager 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 Manager 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 Manager 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

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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 1<sup>st</sup> 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. E-Verify.** By entering into a Contract, the Vendor certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
- a) All persons employed to perform duties within Texas, during the Term of the Contract; and
  - b) All persons (including subcontractors) assigned by the Vendor to perform work pursuant to the Contract, within the United States of America.

The Vendor shall provide, upon request of the Texas State Library & Archives Commission, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Vendor, and Vendor's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the Contract may be immediately terminated, at the discretion of the state and at no fault to the State, with no prior notification. The Vendor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated Contract.

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**Library Services and Technology Act (LSTA) - Terms and Conditions**

**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

**Appendix C**  
**Texas State Library and Archives Commission**  
**Library Services and Technology Act (LSTA) - Terms and Conditions**

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).
- K. Vendor will, with guidance from the TSLAC, properly acknowledge the federal awarding agency, IMLS, on TSLAC branded subscribed resources and materials.

## **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;

**Appendix C**  
**Texas State Library and Archives Commission**  
**Library Services and Technology Act (LSTA) - Terms and Conditions**

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.

**STATE OF TEXAS  
PURCHASE ORDER**

1. Agency Name <b>TEXAS STATE LIBRARY AND ARCHIVES COMMISSION</b> Tax exempt agency of the Texas State Government			2. Purchase order number 306-15-8079		3. Current document number DT - 9		
4. PCC	5. Agency number 306	6. Recycled Code N/A		7. Document (order) amount \$331,592.00		8. REF DOC	
9. Vendor address ProQuest LLC 789 E. Eisenhower Parkway Ann Arbor, Michigan 48108		HUB: YES	NO	10. Vendor Identification No.			X
12. Agency invoice address <b>**Accounting Department Texas State Library and Archives Commission P. O. Box 12516 Austin, TX 78711-2516 Email: invoices.accounting@tsl.state.tx.us Phone: 512-463-5473; Fax: 512-475-0185</b>				11. Person contacted, phone, fax, or other contact info Craig Burin Email: craig.burin@proquest.com Phone: 800-521-0600 Fax:			13. Destination of goods or service <b>Receiving, Room G-007</b> Texas State Library and Archives Commission 1201 Brazos Street Austin, TX 78701

14. Agency contact: Jill Sutherland Phone: 512-936-2774; Fax: 512-475-3393; E-mail: jsutherland@tsl.state.tx.us

15. Order Type: Spot: Service: X Catalog: Emergency: Direct Pub:

16. SFX	M	TC	INDEX	AY	AOBJ	COBJ	AMOUNT	INVOICE NO.
001			17942	15		7276	\$331,592.00	

17. Service Dates or Expected Delivery Date: 10/1/14-9/30/15 ARO FOB Designation

18. Line Number	19. Description of Goods or Services	20. NIGP Code	21. Unit	22. Qty	23. Unit Price	24. Extended Amount
1.	Database for the Genealogy content within HeritageQuest Online.  Invoices to be split as follows per the contract:  Invoice 1 to be issued 10/1/14 for services rendered 10/1/14-12/31/14 in the amount of \$80,483.50  Invoice 2 to be issued 1/1/15 for services rendered 1/1/15-3/30/15 in the amount of \$80,483.50  Invoice 3 to be issued 4/1/15 for services rendered 4/1/15-6/30/15 in the amount of \$80,483.50  Invoice 4 to be issued 7/1/15 for services rendered 7/1/15-9/30/15 in the amount of \$80,483.50  INTERNAL PO ONLY  LSTA#: LS-00-14-0044-14	956-35	Year	1	\$331,592.00	\$331,592.00
	Shipping or Freight Charges	962-86				\$0.00
	<b>TOTALS</b>					\$331,592.00

**\*\*VENDOR MUST REFERENCE PURCHASE ORDER NUMBER ON ALL INVOICES OR INVOICE WILL BE RETURNED TO VENDOR. This purchase has been determined to be "Best Value".**

25. Legal Cites: Texas Government Code, Title 10, Section 2155.139-Purchase for a library resource sharing program

26. Division tracking number: LDN 15-053

27. Approval Signature	Date	28. Vendor Approval	Date
<i>Jill Sutherland</i> GPM, CRM	9/10/14		

**TEXAS STATE LIBRARY AND ARCHIVES COMMISSION  
CONTRACT FOR SERVICES  
AMENDMENT 1 TO CONTRACT: 306-14-8016**

**I. Contracting Parties**

The Receiving Agency: Texas State Library and Archives Commission (TSLAC)

The Performing Vendor: ProQuest LLC

Except as amended below, all terms of the original contract between TSLAC and ProQuest, dated September 25, 2014, will remain in effect.

**III. Term of Contract**

The term of service for Heritage Quest will begin October 1, 2014 and will conclude no later than September 30, 2015, unless otherwise terminated earlier by either party.

Amendment 1 is the first of four optional annual contract renewals, per the terms of the original contract.

**IV. Source of Funds**

Funding for this Amendment is outlined below.

- Percentage of total costs of the contract which will be financed with General Revenue appropriations from Texas Legislature: 0% and \$0.00
- Percentage and dollar amount of total costs of the contract, with all Attachments and Amendments, which will be financed with Federal money: 100% & \$331,592.00
- Percentage and dollar amount of total costs of the contract that will be financed with non-government sources: 0% & \$0.00
- LSTA#: LS-00-14-0044-14

**VI. Payment for Services**

Vendor must place the following tracking number on each invoice issued under this Amendment. Tracking numbers for future renewals will be assigned in the documentation for the renewal.

Current Term: October 1, 2014 – September 30, 2015 – Tracking Number: 306-15-8079

Invoice 1 will be issued for a partial payment of \$82,898.00 on October 1, 2014, for services rendered October 1, 2014 through December 31, 2014.

Invoice 2 will be issued for a partial payment of \$82, 898.00 on October 1, 2014, for services rendered January 1, 2015 through March 31, 2015.

Invoice3 will be issued for a partial payment of \$82, 898.00 on April 1, 2015, for services rendered January 1, 2015 through June 30, 2015.

Invoice 4 will be issued for a partial payment of \$82, 898.00 on July 1, 2015, for services rendered July 1, 2015 through September 30, 2015.

Invoices for services must contain the tracking 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  
PO Box 12516  
Austin, Texas 78711

OR

[AP@tsl.texas.gov](mailto:AP@tsl.texas.gov)

**VII. Contract Amount**

Per Attachment A of this Amendment, the renewal amount for Heritage Quest for the period of October 1, 2014 thru September 30, 2015, is \$331,592.00

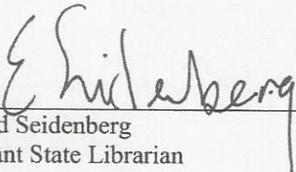
THE UNDERSIGNED RECEIVING AGENCY Hereby certifies that (1) services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of State Government; (2) the services, supplies or materials contracted for are not required by Section 21, Article 16, of the Constitution of Texas to be supplied under contract given to the lowest bidder.

Receiving Agency

Texas State Library and Archives Commission  
P.O. Box 12927  
Austin, Texas 78711-2927

Performing Agency

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

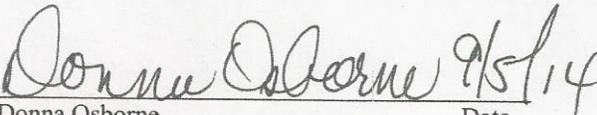
  
Edward Seidenberg  
Assistant State Librarian

  
Cathleen L. May  
Director, Bids and Contracts

09-09-2014  
Date

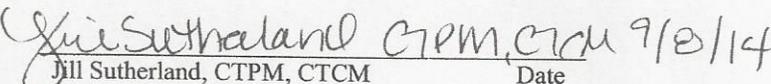
9/10/14  
Date

Approved:

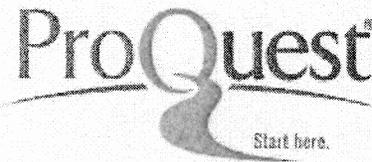
  
Donna Osborne  
Chief Fiscal Officer  
Date 9/5/14

  
Deborah Littrell  
Director of Library Development and Networking  
Date 9/9/14

  
Russlene Waukechon  
Contract Manager  
Date 9/9/14

  
Jill Sutherland, CTPM, CTCM  
Senior Purchaser  
Date 9/8/14

Attachment A



June 12, 2014

ATTN: Russlene Waukeshon  
Texas State Library and Archives Commission (TSLAC)  
1201 Brazos Street  
Austin, TX 78701

RE: Renewal of Contract Number: 306-14-8016

Dear Ms. Waukeshon:

We are pleased to provide this one-year renewal letter as called for in Article VI of Contract Number 306-14-8016. The renewal term of service is October 1, 2014 through September 30, 2015.

This renewal provides access to HeritageQuest Online to TSLAC on the same terms, conditions, and specifications of the original contract referenced above. Per the terms of the contract, the price for the renewal period is \$331,592 and does not exceed 3% over the prior year price.

The renewal period will be invoiced quarterly as follows:

- Invoice 1 will be issued for a partial payment of \$82,898.00 on October 1, 2014, for services rendered October 1, 2014 through December 31, 2014.
- Invoice 2 will be issued for a partial payment of \$82,898.00 on January 1, 2015, for services rendered January 1, 2015 through March 31, 2015.
- Invoice 3 will be issued for a partial payment of \$82,898.00 on April 1, 2015, for services rendered April 1, 2015 through June 30, 2015.
- Invoice 4 will be issued for a partial payment of \$82,898.00 on July 1, 2015, for services rendered July 1, 2015 through September 30, 2015.

Best regards,

A handwritten signature in black ink, appearing to read "Cathleen May".

Cathleen May  
Director, Global Bids and Contracts  
ProQuest LLC  
Direct Phone: (928) 963-0886  
[cathleen.may@proquest.com](mailto:cathleen.may@proquest.com)

**STATE OF TEXAS  
PURCHASE ORDER**

1/23/14- PO Amended to correct PCC Code

Page 1 of 1

1. Agency Name <b>TEXAS STATE LIBRARY AND ARCHIVES COMMISSION</b> Tax exempt agency of the Texas State Government				2. Purchase order number <b>306-14-8016</b>		3. Current document number <b>DT - 9</b>			
4. PCC	5. Agency number 306	6. Recycled Code N/A		7. Document (order) amount \$321,934.00		8. REF DOC			
9. Vendor address ProQuest LLC 789 E. Eisenhower Parkway Ann Arbor, Michigan 48108		HUB:	YES	NO	X	10. Vendor Identification No. [REDACTED]			
12. Agency invoice address <b>**Accounting Department Texas State Library and Archives Commission P. O. Box 12516 Austin, TX 78711-2516 Email: invoices.accounting@tsl.state.tx.us Phone: 512-463-5473; Fax: 512-475-0185</b>				11. Person contacted, phone, fax, or other contact info Craig Burin Email: craig.burin@proquest.com Phone: 800-521-0600 Fax:				13. Destination of goods or service <b>Receiving, Room G-007</b> Texas State Library and Archives Commission 1201 Brazos Street Austin, TX 78701	
14. Agency contact: Jill Sutherland Phone: 512-936-2774; Fax: 512-475-3393; E-mail: jsutherland@tsl.state.tx.us									
15. Order Type: Spot: Service: X Catalog: Emergency: Direct Pub:									
16. SFX	M	TC	INDEX	AY	AOBJ	COBJ	AMOUNT	INVOICE NO.	
001			17942	14		7276	\$321,934.00		
17. Service Dates or Expected Delivery Date: 10/1/13-9/30/14								ARO FOB Designation	
18. Line Number	19. Description of Goods or Services			20. NIGP Code	21. Unit	22. Qty	23. Unit Price	24. Extended Amount	
1.	Database for the Genealogy content within HeritageQuest Online.  Invoices to be split as follows per the contract:  Invoice 1 to be issued 10/1/13 for services rendered 10/1/13-12/31/13 in the amount of \$80,483.50  Invoice 2 to be issued 1/1/14 for services rendered 1/1/14-3/30/14 in the amount of \$80,483.50  Invoice 3 to be issued 4/1/14 for services rendered 4/1/14-6/30/14 in the amount of \$80,483.50  Invoice 4 to be issued 7/1/14 for services rendered 7/1/14-9/30/14 in the amount of \$80,483.50  INTERNAL PO ONLY  LSTA#: LS-00-13-0044-13			956-35	Year	1	\$321,934.00	\$321,934.00	
Shipping or Freight Charges				962-86				\$0.00	
<b>TOTALS</b>								\$321,934.00	
<b>**VENDOR MUST REFERENCE PURCHASE ORDER NUMBER ON ALL INVOICES OR INVOICE WILL BE RETURNED TO VENDOR. This purchase has been determined to be "Best Value".</b>									
25. Legal Cites: Texas Government Code, Title 10, Section 2155.139-Purchase for a library resource sharing program									
26. Division tracking number: LDN 13-111									
27. Approval Signature <i>Jill Sutherland</i> Jill Sutherland, CTPM			Date 1/23/14		28. Vendor Approval			Date	

GCM

**STATE OF TEXAS  
PURCHASE ORDER**

1. Agency Name <b>TEXAS STATE LIBRARY AND ARCHIVES COMMISSION</b> Tax exempt agency of the Texas State Government			2. Purchase order number <b>306-14-8016</b>		3. Current document number <b>DT -</b>	
4. PCC <b>S</b>	5. Agency number <b>306</b>	6. Recycled Code <b>N/A</b>		7. Document (order) amount <b>\$321,934.00</b>		8. REF DOC
9. Vendor address ProQuest LLC 789 E. Eisenhower Parkway Ann Arbor, Michigan 48108			HUB: YES	NO	X	
12. Agency invoice address <b>**Accounting Department Texas State Library and Archives Commission P. O. Box 12516 Austin, TX 78711-2516 Email: invoices.accounting@tsl.state.tx.us Phone: 512-463-5473; Fax: 512-475-0185</b>			10. Vendor Identification No. [REDACTED]			
			11. Person contacted, phone, fax, or other contact info Craig Burin Email: craig.burin@proquest.com Phone: 800-521-0600 Fax:			
			13. Destination of goods or service <b>Receiving, Room G-007 Texas State Library and Archives Commission 1201 Brazos Street Austin, TX 78701</b>			

14. Agency contact: Jill Sutherland Phone: 512-936-2774; Fax: 512-475-3393; E-mail: jsutherland@tsl.state.tx.us

15. Order Type: Spot: Service: X Catalog:		Emergency: AMOUNT		Direct Pub: INVOICE NO.	
16. SFX 001	M	TC 17942	INDEX 14	AY 7276	COBJ

17. Service Dates or Expected Delivery Date: 10/1/13-9/30/14 ARO FOB Designation

18. Line Number	19. Description of Goods or Services	20. NIGP Code	21. Unit	22. Qty	23. Unit Price	24. Extended Amount
1.	Database for the Genealogy content within HeritageQuest Online.  Invoices to be split as follows per the contract:  Invoice 1 to be issued 10/1/13 for services rendered 10/1/13-12/31/13 in the amount of \$80,483.50  Invoice 2 to be issued 1/1/14 for services rendered 1/1/14-3/30/14 in the amount of \$80,483.50  Invoice 3 to be issued 4/1/14 for services rendered 4/1/14-6/30/14 in the amount of \$80,483.50  Invoice 4 to be issued 7/1/14 for services rendered 7/1/14-9/30/14 in the amount of \$80,483.50  INTERNAL PO ONLY  LSTA#: LS-00-13-0044-13	956-35	Year	1	\$321,934.00	\$321,934.00
	Shipping or Freight Charges	962-86				\$0.00
<b>TOTALS</b>						<b>\$321,934.00</b>

**\*\*VENDOR MUST REFERENCE PURCHASE ORDER NUMBER ON ALL INVOICES OR INVOICE WILL BE RETURNED TO VENDOR. This purchase has been determined to be "Best Value".**

25. Legal Cites:

26. Division tracking number: LDN 13-111

27. Approval Signature <i>Jill Sutherland</i> Jill Sutherland, CTPM		Date <i>9/25/13</i>	28. Vendor Approval	Date
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**TEXAS STATE LIBRARY AND ARCHIVES COMMISSION  
CONTRACT FOR SERVICES for TEXSHARE CORE OFFERINGS  
CONTRACT NUMBER: 306-14-8016**

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

**I. CONTRACTING PARTIES**

The Receiving Agency: Texas State Library and Archives Commission (TSLAC)

The Performing Vendor: ProQuest LLC (ProQuest)

**II. STATEMENT OF SERVICES TO BE PERFORMED**

Services performed will per the specifications outlines in the RFO#: 306-14-8016 (Attachment A), ProQuest's proposal (Attachment B), ProQuest's Terms and Conditions (Attachment C), TSLAC's Terms and Conditions, which supersede those listed within Attachment A (Attachment D), and the LSTA Terms and Conditions listed within RFO#: 306-14-8016 (Attachment E).

**III. TERM OF CONTRACT**

The term of service will begin October 1, 2013, and will conclude no later than September 30, 2014, unless otherwise terminated earlier by either party. This Contract may be renewed for subsequent one-year terms beginning October 1, 2014 through September 30, 2018 at the sole discretion of the TSLAC via a renewal letter sent by ProQuest.

**IV. TSLAC'S AUTHORIZATION**

TSLAC represents and warrants that it has the right to enter into this Contract on behalf of each and every one of the TexShare Participating Libraries. To the best of its ability, TSLAC shall reasonably ensure compliance with all terms and conditions of this Contract by all of the TexShare Participating Libraries and by all Authorized Users.

**V. 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 must provide electronic and information resources and associated Product documentation and technical support that comply with Accessibility Standards.

**a. Evaluation, Testing and Monitoring**

- i. TSLAC may review, test, evaluate and monitor ProQuest'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 a contract. Testing and monitoring may include user acceptance testing.
- ii. Neither (1) the review, testing (including acceptance testing), evaluation or monitoring of any Product, nor (2) the absence of such review, testing, evaluation or monitoring, will result in a waiver of the State's right to contest the ProQuest's assertion of compliance with the Accessibility standards.
- iii. ProQuest 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**

- i. ProQuest represents and warrants that: (i) as of the effective date of the 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 (ii) 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 TexShare Participating Libraries use the Product in a manner that renders it noncompliant.

- ii. In the event ProQuest 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 represents and warrants that it will, in a timely manner and at no cost to TSLAC and/or the TexShare Participating 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.
  - iii. ProQuest acknowledges and agrees that these representations and warranties are essential inducements on which TSLAC relies in awarding this contract.
  - iv. ProQuest'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**
- i. Pursuant to Texas Government Code Sec. 2054.465, neither ProQuest 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.
  - ii. In the event of a breach of ProQuest's representations and warranties, ProQuest 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**

<b>Accessibility Issue</b>	<b>Approximate date to be resolved:</b>
1. Add form labels to search boxes	March 2014
2. Add alternative text to images used in the search pages	March 2014
3. Add alternative or descriptive text to the historical images in HeritageQuest	March 2014

## VI. SOURCE OF FUNDS

A breakdown of the funding is provided below:

- Percentage of total costs of the program which will be financed with Federal money: 100%
- Dollar amount of Federal funds for the project: \$321,934.00
- Percentage and dollar amount of total costs of the project that will be financed with non-governmental sources:

LSTA#: LS-00-13-0044-13

TSLAC is requesting invoices to be split into quarterly payments as shown below.

Invoice 1 will be issued a partial payment on October 1, 2013, for services rendered October 1, 2013, through December 31, 2013, in the amount of \$80,483.50.

Invoice 2 will be issued a partial payment on January 1, 2014, for services rendered January 1, 2014, through March 30, 2014, in the amount of \$80,483.50.

Invoice 3 will be issued a partial payment on April 1, 2014, for services rendered April 1, 2014, through June 30, 2014, in the amount of \$80,483.50.

Invoice 4 will be issued a partial payment on July 1, 2014, for services rendered July 1, 2014, through September 30, 2014, in the amount of \$80,483.50.

Renewal letters will be issued by ProQuest for years beyond the initial period of October 1, 2013, through September 30, 2014.

**VII. PAYMENT FOR SERVICES**

The Receiving Agency shall timely reimburse the Performing Vendor based upon receipt of itemized invoices submitted by the Performing Vendor in accordance with the Texas Prompt Payment Act. Reimbursements shall be made by the Receiving Agency’s issuance of state warrants for payment to the Performing Vendor.

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

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

Please place the following tracking number on the invoice for the time period specified.

October 1, 2013 – September 30, 2014 - Tracking Number: 306-14-8016

*Invoices for services must contain the Receiving Agency’s tracking number and be submitted to the following address:*

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

*OR*

*Invoices.accounting@tsl.state.tx.us*

*Vendor must submit invoices for all items delivered to and accepted by the Receiving Agency.*

**VIII. CONTRACT AMOUNT**

The total amount for October 1, 2013 – September 30, 2014 shall not exceed \$321,934.00 without prior approval from the Receiving Agency’s Purchasing Department. Renewal amounts will not increase more than what is listed below.

<b>Time Period</b>	<b>Year-over-Year % Cap</b>
10/1/14-9/30/15	3%
10/1/15-9/30/16	3%
10/1/16-9/30/17	4%
10/1/17-9/30/18	5%

This Contract is subject to the 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.

**IX. TERMS AND CONDITIONS**

Terms and Conditions are those listed in Attachments C and D, as well as the LSTA Terms and Conditions from RFO#: 306-14-8016 (Attachment E) which is made a part of this Contract for all purposes. The Texas State Library and Archives Commission reserves the right to amend and or add to the terms and conditions for future fiscal years. The Performing Vendor will be made aware of the terms and conditions that have been amended/and or added at the time of renewal.

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 bidder.

**RECEIVING AGENCY**

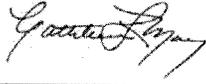
*Texas State Library and Archives Commission  
1201 Brazos Street  
Austin, Texas 78701*

  
\_\_\_\_\_  
Donna Osborne  
Chief Fiscal Officer

9/25/13  
\_\_\_\_\_  
Date

**PERFORMING VENDOR**

*ProQuest LLC  
789 E. Eisenhower Parkway  
Ann Arbor, Michigan 48108*

  
\_\_\_\_\_  
Cathleen L. May  
Director, Bids and Contracts

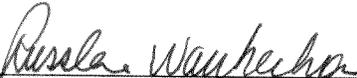
9/24/13  
\_\_\_\_\_  
Date

*Approved:*

  
\_\_\_\_\_  
Rebecca Cannon  
Manager, Accounting and Grants

09-25-13  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Deborah Littrell  
Director, Library Development and Networking

  
\_\_\_\_\_  
Russlene Waukechon  
Contract Manager

9/25/2013  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jill Sutherland, CTPM, CTCM  
Senior Purchaser

9/25/13  
\_\_\_\_\_  
Date

Texas State Library and Archives Commission  
 TexShare Database Program  
 Request for Offer: 306-14-8016

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*Appendix F – Issues with Terms & Conditions*

*Appendix G – LSTA Terms and Conditions*

**Texas State Library and Archives Commission  
TexShare Database Program  
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**Section I  
General**

**1.1 Purpose of Request for Offer**

The Texas State Library and Archives Commission (TSLAC) is requesting offers from qualified online database providers of genealogy, census or historic maps. The purpose will be to provide shared access to all libraries that are members of the TexShare Program (Program) and to the registered users of those libraries. The member libraries include academic libraries, public libraries, state governmental agency libraries, and libraries of clinical medicine in Texas.

These shared resources must provide indexing and documents for significant content in one or more of the areas of genealogy, census or historic maps. Current Program subscriptions can be viewed at: <https://www.tsl.state.tx.us/texshare/databasecontractlistfy2013.html>

Definitions can be found in Appendix A.

**1.2 The Current TexShare Database Program**

- a. The following table provides a summary of current participants in the Program as of February 2013. Please see Appendix B for the complete list.

<b>Type</b>	<b>Number</b>
Four-year Institutions	95
Community Colleges	59
Libraries of Clinical Medicine	4
State Governmental Agency Libraries	Unknown
Public Libraries	536

For additional information on the current Program, go to: [www.tsl.state.tx.us/texshare](http://www.tsl.state.tx.us/texshare)

- b. While we do not anticipate changes in the upcoming years, at any time during the contract year, additional institutions and libraries may join the Program.
- c. Past databases usage by Program participants is collected and grouped into two categories: academic libraries AND public/state governmental agency libraries. Fiscal Year 2012 (September 1, 2011 – August 31, 2012) search statistics for core databases are outlined below. Statistics are based upon vendor reporting, and some statistics are not available on databases.

<b>Academic institutions &amp; libraries of clinical medicine and remote users:</b>	
Sessions	53,871,836
Searches	141,020,950
Full-text documents	21,646,262

<b>Public &amp; state governmental agency libraries and remote users:</b>	
Sessions	17,804,509
Searches	21,379,521
Full-text documents	8,216,309

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**Section II  
System Requirements**

**2.1 Mandatory Database Requirements**

Requirements set forth in the following table are **mandatory** and indicate the minimal information that must be provided, capabilities that must be provided, or minimum performance levels that must be met by the selected Vendor.

Those offers not meeting the minimum requirements will be considered non-responsive, and will not be eligible for further evaluation.

Offers will be evaluated against the following mandatory items on a Yes/No basis. A 'No' to any criterion will eliminate further consideration.

See Appendix C for the **MANDATORY** requirements checklist.

<b>Mandatory Criteria Category</b>	<b>Description</b>	<b>Criterion</b>
<i><b>Web-based Products</b></i>	Databases offered must be accessible via the Internet, and viewable using standard Internet browsers for Windows, Macintosh, and Linux operating systems (such as Explorer, Firefox, and Google Chrome).	Are the products in the offer web-accessible by standard browsers for these three operating systems?
<i><b>Language</b></i>	Primary interface of offered databases must be in English language	Is this an English-language product?
<i><b>Full Production Products</b></i>	Offered databases must be full-production versions that are completely implemented and thoroughly tested. Products that are currently being alpha or beta-tested at the time of statewide trials and/or demonstrations will not be considered.	Will the product be in full commercial release by the date trials are scheduled to begin?
<i><b>Copyright &amp; Royalty Fees Included in Price</b></i>	Offered databases must be priced so that all copyright and royalty fees are included. Products that do not include copyright and royalty fees will not be considered.	Are all copyright and royalty fees for patrons' personal uses included in the offered database price?
<i><b>Authentication &amp; Remote Access-I</b></i>	Offered databases must provide access authentication via IP address plus one or more other acceptable alternate means (login/password, referring URL, or URL with embedded login and password), as required by participating libraries.	Is access authentication for offered databases available via IP addresses, alternate means, or all simultaneously?
<i><b>Authentication &amp; Remote Access-II</b></i>	TexShare defines "remote access" as access from workstations <u>off-site</u> from buildings on the same telecommunications network as the member library (e.g., college campus	Do the offered databases include remote access to the databases at no additional charge?

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	for an academic library, city hall for a public library, etc), or access from the home, office or other outside-the-library locations used by the library's registered users.	
<b><i>Results Output Options</i></b>		Are end users able to print, download, and email results of searches of the offered databases for their personal uses, at no additional charge?

## 2.2 System Requirements

The System Requirements are located in Package 3 on the ESBD. Please review and fill out the information for each component within Package 3.

## 2.3 TexSelect Contracts

TexSelect contracts are contracts with vendors to provide a number of specialized databases and journals at negotiated subscription fees that are usually less than member libraries would pay if they subscribed to these databases individually. TexShare member libraries are eligible to subscribe at these reduced fees.

TSLAC will negotiate TexSelect pricing for all contracts awarded from this RFO. TSLAC also reserves the right to award TexSelect contracts and negotiate pricing for databases not awarded from this RFO.

## 2.4 Subscription Timelines

All subscriptions for TexShare databases will be for a minimum period of one year, with an option to renew for additional one-year terms. Vendors are expected to allow maximum flexibility in adjusting subscription terms and supporting split invoicing. All contracts are subject to availability of funds.

## 2.5 Subcontractors

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Respondent. No subcontract under the Contract shall relieve the Respondent of responsibility for ensuring the requested services are provided. Respondents planning to subcontract all or a portion of the work to be performed must identify the proposed subcontractors.

TSLAC prefers to select a primary Vendor to be responsible for contract performance and payment, whether or not subcontractors are involved. If subcontractors will be used during the implementation of the project, Respondent shall provide documentation that the subcontractor meets the same minimum qualifications listed in Appendix C.

## 2.6 Historically Underutilized Business Subcontracting Plan (HUB Plan)

ALL offers MUST include a Historically Underutilized Business (HUB) Subcontracting Plan. Offers not including this plan will be disqualified! For a link to the instructions and form please go to <http://www.cpa.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

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**Section III  
Offer Information**

**3.1 Schedule of Events**

RFO Released	March 5, 2013
Questions Submitted no later than	March 19, 2013
Questions and Answers to be posted on the ESBD no later than	March 22, 2013
<b>RFO OPENED (LAST DAY TO SUBMIT OFFERS)</b>	<b>April 5, 2013 – 11:00am CT</b>
Online Trials Ready for use	April 5, 2013 – May 31, 2013
Vendors selected for demonstrations will be notified by	No later than May 23, 2013
Vendor Demonstrations	June 11, 2013
Final databases are selected and contracts are recommended for approval	Week of June 17, 2013
Database service proposed to begin for TexShare member libraries	October 1, 2013
Contract awarded upon approval of TSLAC's Commission (Summer 2013). Contract will be executed shortly after approval.	
Service dates will begin October 1, 2013	

The TSLAC reserves the right to change the dates in the schedule of events above upon written notification to prospective Respondents through a posting on the ESBD.

**3.2 RFO Opening**

The public Opening of the RFO will take place at the time and date listed in Section 3.1 at the following location:

Texas State Library and Archives Commission  
1201 Brazos Street, 3<sup>rd</sup> Floor Conference Room  
Austin, Texas 78701

NOTE: This Opening will be open to the public, however only the names of the respondents will be read out loud.

**3.3 Offer Requirements**

- a. Offer must include a sample of the Respondent's proposed contract and/or terms and conditions.
- b. **Offers must address all criteria listed in the RFO Submittal Requirements Checklist (Appendix D).**
- c. Respondents are responsible for all costs associated with preparing a response to this RFO.
- d. Documentation provided with the Offer should be complete and comprehensive. The TSLAC will not be responsible for locating or securing information not included in the Offer. Failure to furnish required documentation with the Offer may result in the Offer being deemed incomplete and non-responsive, resulting in rejection.
- e. The TSLAC will not be responsible for any expenses relating to Offer offers or offer development of documentation that may result from this procurement action.
- f. All Offers must be received and time stamped at the TSLAC Purchasing Department (Room 309) by the time and date specified in Section 3.1. The TSLAC will reject all submittals received past the time and date specified in Section 3.1.

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- g. Offers should be placed in a separate envelope or package and correctly identified with the RFO number (306-14-8016) and Offer opening date and time listed Section 3.1. It is the Respondent's responsibility to appropriately mark and deliver the Offer to the TSLAC by the specified date and time.
- h. The TSLAC is not responsible for lost or late offers.
- i. **Telephone, facsimile, and emailed Offers will not be accepted.**
- j. The TSLAC will bear no responsibility for costs associated with preparing this information.
- k. Respondents must enter their Texas Identification Number System (TINS), full company name and address on the Offer Coversheet (ESBD-Package 1).
- l. Offers cannot be altered or amended after opening time. No offer can be withdrawn after opening time without approval by the TSLAC based on acceptable written request.
- m. 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. Do not include tax in the Offer. Tax Exemption Certificates are available upon request.
- n. Tie Offer awards will be made in accordance with TAC Rule 13.6(b)(3) and 2.38(Preferences). Consistent and continued tied offers could cause rejection of Offers by the TSLAC and/or investigation for antitrust violations.
- o. Late, illegible, incomplete, or otherwise non-responsive Offers will not be considered.
- p. Any terms and conditions attached to an Offer will not be considered unless specifically referenced within the Offer and may result in disqualification of the Offer.
- q. Sole Ownership: Pursuant to Section 231.006(c), Family code, Offers must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the Offer.
- r. **ALL OFFERS MUST BE SIGNED. FAILURE TO SIGN THE OFFER COVERSHEET WILL CAUSE DISQUALIFICATION.**

#### 3.4 Amendments to RFO

Any amendment and addenda to this RFO will be posted as an addendum on the ESBD. It is the responsibility of interested parties to periodically check the ESBD for updates to the procurement prior to submitting a response. The Respondent's failure to periodically check the ESBD will in no way release the selected vendor from "addenda or additional information" resulting in additional costs to meet the requirements of this RFO.

Receipt of all addenda to these Offers should be acknowledged by returning a signed copy of each addendum with the submitted Offer BEFORE the Offer opening date and time.

#### 3.5 Questions

- a. All questions shall be submitted in writing to Jill Sutherland at facsimile 512-475-3393 or by email to [jsutherland@tsl.state.tx.us](mailto:jsutherland@tsl.state.tx.us) no later than the time and date listed in the Schedule of Events (Section 3.1). **All inquires must have RFO # 306-14-8016 listed in the subject line of the email.**
- b. All questions and answers will be posted on the ESBD no later than the time and date listed in the Schedule of Events (Section 3.1). It is the Respondent's responsibility to view these questions and answers; the TSLAC will **NOT** send a notification email when they are posted. If a Respondent does not have Internet access, a copy of all written responses may be obtained through the point of contact listed on the Offer Coversheet.
- c. Except as otherwise provided in this Section, prior to the response due date and prior to a final award, other employees and representatives of the TSLAC will not answer questions or otherwise discuss contents of this Offer with any potential Respondent or its representatives. Failure to observe this restriction may result in disqualification of any subsequent response. This restriction does not preclude discussions unrelated to this Offer.
- d. If Respondent takes any exceptions to any provisions listed in this Offer, these exceptions must be specifically and clearly identified by Section in Respondent's response to this Offer and the Respondent must propose an alternative with their Offer Response.

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### 3.6 Texas Public Information Act

Any Response that bears a copyright will be rejected as non-responsive. Responses will be subject to the Texas Public Information Act, Texas Government Code, Chapter 552, and may be disclosed to the public upon request after award. Subject to the Act, Respondents may only protect trade and confidential information from public release. **Respondents are responsible for reading the Public Information Act and understanding how it applies to this RFO.**

The determination of whether information is confidential and not subject to disclosure under the Public Information Act is the duty of the Office of the Attorney General (OAG). The TSLAC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the Respondent are not acceptable. The TSLAC shall comply with all opinions of the OAG.

The TSLAC assumes no responsibility for asserting legal arguments on behalf of anyone. Respondents are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

If Respondent's offer contains any information which Respondent claims is confidential and not subject to release under the PIA, Respondent must prepare and deliver with RFO submission four CDs containing the following information:

- a. Two CDs containing complete copies of all Respondent's submissions pursuant to this RFO. These shall be marked "Complete RFO Documents, [Respondent's Name], TSLAC RFO#: \_\_\_\_\_ . CONTAINS CONFIDENTIAL INFORMATION."
- b. Two CDs, each containing copies of all Respondent's submissions with all information claimed as confidential excised, blacked out or otherwise redacted. Each of these CDs shall also contain an Appendix which contains clear references to all redacted information including a general description of the redacted information. These CDs shall be marked "For Public Release: Redacted Version of [Respondent's Name], TSLAC RFO#: \_\_\_\_\_ ."

### 3.7 Format of RFO Submittal Requirements Checklist

A checklist of the items required and the required formatting of the response can be found in Appendix D. Please complete the checklist and place in the front of the original offer.

### 3.8 Submission

- a. All Offers will become the property of the TSLAC upon submission.
- b. The TSLAC reserves the right to reject any and/or all Offers received, and to cancel this RFO in part or in its entirety. This solicitation of Offers in no way obligates TSLAC to award a contract.

### 3.8 Delivery of Offers

Offers shall be submitted to the TSLAC Purchasing Department by U.S. Postal Service, Overnight/Express Mail, or Hand Delivered to 1201 Brazos Street, Room 309, Austin, Texas 78701 by the Offer opening date and time. Purchasing hours are from 8:00am to 4:15pm CT.

### 3.9 Offer Opening

Offers will be opened at the TSLAC at the time and date listed on in Section 3.1.

- a. All submitted Offers become the property of the TSLAC after the Offer submittal deadline/opening date.
- b. Offers submitted shall constitute an offer for a period of ninety (90) days or until an award is made by the TSLAC, whichever occurs later. This period may be extended at the TSLAC's request and with the Respondent's written agreement.
- c. A response to this Offer is an offer to contract based upon the terms, conditions and specifications contained herein. Offers do not become contracts until awarded.
- d. The factors listed in TAC, Title 10, Subtitle D, Section 2155.074, 2155.144, 2156.007, and 2157.003 shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.

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**3.10 Offer Evaluation**

It is the intent of the TSLAC to award contracts for one or more products, to one or more vendors, based on a consideration of how offered products would provide the overall best value for the TSLAC, the TexShare consortium members, and the State of Texas. The offers determined by the RFO subcommittee to represent the best overall value (content, performance, and fitness to statewide needs) in response to this RFO will be offered a contract, and may be contacted for a best and final offer.

An evaluation team has been established to evaluate the offers that are determined to be responsive to this RFO. The team consists of representatives for the TexShare EIWG and TSLAC employees, and may also include other impartial individuals who are not TSLAC employees.

The evaluation team will evaluate and score each offer based on the following criteria:

<b>Criteria</b>	<b>Percentage</b>
II. Content	45%
III. Search Engine (Interface) and Ease of Use	30%
Additional features: <ul style="list-style-type: none"> <li>• VI. Linking &amp; MARC Records</li> <li>• VIII. Support for Contract</li> <li>• VIII. Proposed System Performance</li> <li>• IX. Statistics Reports</li> <li>• X. Training &amp; Branding</li> <li>• XI. Licensing</li> </ul>	15%
IV. Delivery	10%
Price, including all costs of procurement	Price will be a component of best value consideration

**3.11 Contract Term**

The term of service will begin October 1, 2013 and will conclude no earlier than September 30, 2014, unless otherwise terminated earlier by either party. An awarded contract may be renewed for subsequent one-year terms, at the sole discretion of the TSLAC, provided mutually agreeable price, terms and conditions are negotiated prior to the expiration of any executed contract.

**3.12 Performance Tracking**

The TSLAC will monitor the performance of the Vendor contracted in response to this RFO. All services under a Contract shall be performed at an acceptable quality level and in a manner consistent with acceptable industry standards, custom, and practice.

Annually the TSLAC will submit a Respondent Performance Report to the Comptroller (CPA). The Awarded Respondent will receive a paper copy of this report, as well as an emailed copy. A sample of the Vendor Performance Report can be found at

[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/vendor-performance-faq/](http://www.window.state.tx.us/procurement/prog/vendor_performance/vendor-performance-faq/)

Performance will be based on the following measures:

- a. The proposed system should operate so that 95% of the responses to a simply inquiry (author's name or title words) be completed in five (5) seconds
- b. Content is available 98% of the time 24/7, 365 days of the year
- c. Vendor provides dedicated technical staff to support the TexShare contract
- d. Statistical reports are available at the consortial level with specialized reports available by type of library
- e. Vendor provides annual training for consortia members

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**3.14 TSLAC Terms and Conditions**

TSLAC Terms and Conditions are listed within Appendix E. These will become part of any contract awarded. The TSLAC reserves the right to add, delete, and amend terms and conditions. The Awarded Respondent will be notified of changes to the terms and conditions.

Please list terms and conditions that you take issue with in Appendix F.

**3.15 LSTA Terms and Conditions**

LSTA Terms and Conditions are listed within Appendix G. These will become part of any contract awarded. The TSLAC reserves the right to add, delete, and amend terms and conditions. The Awarded Respondent will be notified of changes to the terms and conditions required by LSTA.

We are unable to make vendor-requested changes to these terms and conditions.

## Appendix A Definitions

Abstracts - Indexes that include a brief summary – called an “abstract” – of each article following the basic citation.

Agency – The Texas State Library and Archives Commission is the agency of the State of Texas that is issuing this RFO.

Awarded Vendor - The organization/individual that is awarded and has an approved contract with the State of Texas for the services identified in this RFO.

Central Time – either Central Standard Time or Central Daylight Time, whichever is prevailing in Austin, Texas.

Citation - The pertinent information needed to find the full text of a publication. Citation of an article in a periodical generally includes author(s), article title, source journal title, volume, pages, and date.

Contractor – Individual or company whose proposal has been accepted by the AGENCY and is awarded a fully executed, written contract.

Customer – The citizens of the State of Texas, as represented by the Electronic Information Working Group (EIWG), on behalf of the libraries of the State of Texas.

Effective Date - the date that a binding contract is executed by the final party.

EIWG – The Electronic Information Working Group

ESBD- Electronic State Business Daily <http://esbd.cpa.state.tx.us/>

Full text - Includes the complete text of the articles, along with pictures or other graphics

May – Indicates something that is not mandatory but permissible.

Peer-Reviewed - A peer-reviewed journal is one in which each feature article has been examined by people with credentials in the article’s field of study before it is published.

Popular Magazines - Usually written for a fairly general audience. Includes information which tends to be less detailed or authoritative. Reports events, the author’s opinion or simplified versions of the finds of others. Footnotes and bibliographies are rarely included. Articles usually provide some general overview information on current events, issues and trends.

Professional Journals - Typically reports on developments in a particular profession, trade or industry. Content is oriented to those who are either in the field or who have a particular interest in the subject matter. Usually does not include original research. The writing tends to be less complex and technical than a scholarly journal.

Program – Refers to TexShare, a component of the Texas State Library and Archives Commission, delivering a core set of materials and information online to the member institutions of the TexShare consortium.

Proposal – A formal offer submitted in response to this solicitation.

Request for Offers (RFO) – Formal procurement document used as a solicitation document in this procurement, as well as all amendments and modifications thereto. The purpose of an RFO is to permit the vendor community to suggest various database products to meet the need at a given price.

Respondent - Organization/individual submitting a proposal in response to this RFO

Scholarly Journals - Subject coverage tends to be more specialized. Articles reflect the most recent or original research in a particular academic area. Most scholarly journals are referred with articles reviewed by an editorial board made up of scholars or authorities in the field or peer-reviewed.

## **Appendix A Definitions**

Shall/Must/Will - Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.

Should - Indicates something that is recommended but not mandatory. If the vendor fails to provide recommended information, the State may, at its sole option, ask the vendor to provide the information or evaluate the proposal without the information.

State - The State of Texas and any state agency identified herein.

Subcontractor - Third party, not directly employed by the vendor, who will provide services identified in this RFO. This does not include third parties who provide support or incidental services to the vendor.

Subject Magazines - Typically reports on developments in a particular subject area. Content is oriented to those who are either in the field or who have a particular interest in the subject matter. Usually does not include original research. The writing tends to be less complex and technical than a scholarly journal.

TAC - Texas Administrative Code

TexShare - a program of the Texas State Library and Archives Commission

TSLAC – Texas State Library and Archives Commission

**Appendix B**  
**Current TexShare Participants**  
**Four-Year Institutions**

Attachment A

<b>Type</b>	<b>City</b>	<b>Institution</b>	<b>Total FTE's (Fall 2012)</b>
PC	San Angelo	Angelo State University	5,326
PC	Beaumont	Lamar University	9,057
PC	Wichita Falls	Midwestern State University	4,659
PC	Prairie View	Prairie View A&M University	7,177
PC	Huntsville	Sam Houston State University	13,802
PC	Nacogdoches	Stephen F. Austin State University	10,614
PC	Alpine	Sul Ross State University	2,062
PC	Stephenville	Tarleton State University	6,599
PC	Laredo	Texas A&M International University	4,321
PC	Killeen	Texas A&M University - Central Texas	982
PC	College Station	Texas A&M University - College Station	41,938
PC	Commerce	Texas A&M University - Commerce	6,187
PC	Corpus Christi	Texas A&M University - Corpus Christi	7,235
PC	Kingsville	Texas A&M University - Kingsville	4,745
PC	San Antonio	Texas A&M University - San Antonio	1,429
PC	Texarkana	Texas A&M University - Texarkana *	914
PC	Galveston	Texas A&M University at Galveston	1,650
PC	Houston	Texas Southern University	8,105
PC	San Marcos	Texas State University - San Marcos	24,770
PC	Lubbock	Texas Tech University	26,385
PC	Denton	Texas Woman's University	9,230
PC	Houston	University of Houston	29,818
PC	Houston	University of Houston - Clear Lake	4,679
PC	Houston	University of Houston - Downtown	8,414
PC	Victoria	University of Houston - Victoria *	2,042
PC	Denton	University of North Texas	26,780
PC	Arlington	University of Texas at Arlington	20,242
PC	Austin	University of Texas at Austin	45,279
PC	Brownsville	University of Texas at Brownsville *	3,441
PC	Richardson	University of Texas at Dallas	12,089
PC	El Paso	University of Texas at El Paso	15,058
PC	San Antonio	University of Texas at San Antonio	22,494
PC	Tyler	University of Texas at Tyler	4,632
PC	Odessa	University of Texas of the Permian Basin	2,527
PC	Edinburg	University of Texas Pan American	14,103
PC	Canyon	West Texas A&M University	5,947
PC	Dallas	University of North Texas at Dallas	2,000
PC	Dallas	Baylor College of Dentistry	n/a
PC	Houston	Houston Academy of Medicine	n/a
PC	Dallas	Parker University	1,024
PC	Pasadena	Texas Chiropractic College	372

**Appendix B**  
**Current TexShare Participants**  
**Four-Year Institutions**

<b>Type</b>	<b>City</b>	<b>Institution</b>	<b>Total FTE's (Fall 2012)</b>
PC	Lubbock	Texas Tech University Health Sciences Center	3,710
PC	Denton	University of North Texas Health Science Center at Ft. Worth	1,390
PC	Tyler	University of Texas Health Center at Tyler	0
PC	San Antonio	University of Texas Health Science Center at San Antonio	4,213
PC	Houston	University of Texas MD Anderson Cancer Center	214
PC	Galveston	University of Texas Medical Branch at Galveston	3,350
PC	Dallas	University of Texas Southwestern Medical Center at Dallas	4,242
IC	Abilene	Abilene Christian University	4250
IC	Garland	Amberton University	985
IC	Sherman	Austin College	1358
IC	Austin	Austin Graduate School of Theology	37
IC	Austin	Austin Presbyterian Theological Seminary	175
IC	Jacksonville	Baptist Missionary Association Theological Seminary	68
IC	Waco	Baylor University	14210
IC	Ft. Worth	College of St. Thomas More	34
IC	Austin	Concordia University	1379
IC	Dallas	Criswell College	255
IC	Dallas	Dallas Baptist University	3709
IC	Dallas	Dallas Theological Seminary	1097
IC	Marshall	East Texas Baptist University	1116
IC	Dallas	Graduate Institute of Applied Linguistics	104
IC	Abilene	Hardin-Simmons University	2072
IC	Houston	Houston Baptist University	2338
IC	Brownwood	Howard Payne University	1044
IC	Austin	Huston-Tillotson College	834
IC	Hawkins	Jarvis Christian College	619
IC	Longview	LeTourneau University	3257
IC	Lubbock	Lubbock Christian University	1554
IC	Abilene	McMurry University	1319
IC	San Antonio	Oblate School of Theology	130
IC	San Antonio	Our Lady of the Lake University of San Antonio	1863
IC	Dallas	Paul Quinn College	154
IC	Kerrville	Schreiner University	1016
IC	Austin	Seminary of the Southwest	88
IC	Houston	South Texas College of Law	0
IC	Dallas	Southern Methodist University	9091
IC	Keene	Southwestern Adventist University	723
IC	Waxahachie	Southwestern Assemblies of God University	1674
IC	Fort Worth	Southwestern Baptist Theological Seminary	200
IC	Terrell	Southwestern Christian College	193
IC	Georgetown	Southwestern University	1288

**Appendix B**  
**Current TexShare Participants**  
**Four-Year Institutions**

<b>Type</b>	<b>City</b>	<b>Institution</b>	<b>Total FTE's (Fall 2012)</b>
IC	Austin	St. Edward's University	4200
IC	San Antonio	St. Mary's University of San Antonio	3489
IC	Fort Worth	Texas Christian University	8187
IC	Tyler	Texas College	945
IC	Seguin	Texas Lutheran University	1334
IC	Fort Worth	Texas Wesleyan University	2589
IC	San Antonio	Trinity University	2609
IC	Irving	University of Dallas	2130
IC	Belton	University of Mary Hardin-Baylor	2488
IC	Houston	University of Saint Thomas	2118
IC	San Antonio	University of the Incarnate Word	4973
IC	Plainview	Wayland Baptist University	2702
IC	Marshall	Wiley College	1194
IC	Houston	Rice University	5495

**Appendix B**  
**Current TexShare Participants**  
**Community Colleges**

<b>Type</b>	<b>City</b>	<b>Institution</b>	<b>Total FTE's (Fall 2012)</b>
CC	San Antonio	Alamo Community College District	33,165
CC	Alvin	Alvin Community College	2,877
CC	Amarillo	Amarillo College	5,902
CC	Lufkin	Angelina College	3,326
CC	Austin	Austin Community College	19,174
CC	Brenham	Blinn College	11,649
CC	Lake Jackson	Brazosport College	2,132
CC	Killeen	Central Texas College District	5,940
CC	Cisco	Cisco College	2,768
CC	Beeville	Coastal Bend College	2,414
CC	Texas City	College of the Mainland	2,226
CC	Plano	Collin College	13,926
CC	Dallas/Mesquite	Dallas County Community College District	34,155
CC	Corpus Christi	Del Mar College	6,719
CC	El Paso	El Paso Community College District	16,824
CC	Galveston	Galveston College	1,182
CC	Denison	Grayson County College	3,181
CC	Hillsboro	Hill College	2,646
CC	Houston	Houston Community College System	22,224
CC	Big Spring	Howard County Junior College District	2,363
CC	Kilgore	Kilgore College	4,016
CC	Orange	Lamar State College - Orange	1,444
CC	Port Arthur	Lamar State College - Port Arthur	1,354
CC	Laredo	Laredo Community College	5,425
CC	Baytown	Lee College	3,755
CC	Houston	Lone Star College System District	26,354
CC	Waco	McLennan Community College	5,835
CC	Midland	Midland College	3,372
CC	Corsicana	Navarro College	6,046
CC	Gainesville	North Central Texas College	5,255
CC	Mt. Pleasant	Northeast Texas Community College	1,924
CC	Odessa	Odessa College	2,982
CC	Carthage	Panola College	1,338
CC	Paris	Paris Junior College	3,568
CC	Ranger	Ranger College	696
CC	Pasadena	San Jacinto Community College District	17,462
CC	Levelland	South Plains College	6,466
CC	McAllen	South Texas College	14,879

**Appendix B**  
**Current TexShare Participants**  
**Community Colleges**

<b>Type</b>	<b>City</b>	<b>Institution</b>	<b>Total FTE's (Fall 2012)</b>
CC	Uvalde	Southwest Texas Junior College	3,368
CC	Hurst	Tarrant County College District	24,009
CC	Temple	Temple College	3,568
CC	Texarkana	Texarkana College *	3,063
CC	Brownville	Texas Southmost College *	6,072
CC	Harlingen	Texas State Technical College - Harlingen	3,520
CC	Marshall	Texas State Technical College - Marshall	603
CC	Waco	Texas State Technical College - Waco	4,691
CC	Sweetwater	Texas State Technical College - West Texas	1,030
CC	Athens	Trinity Valley Community College	4,291
CC	Tyler	Tyler Junior College	7,823
CC	Vernon	Vernon College	1,791
CC	Victoria	Victoria College *	2,330
CC	Weatherford	Weatherford College	3,470
CC	Snyder	Western Texas College	1,266
CC	Wharton	Wharton County Junior College	4,183
IC	Jacksonville	Jacksonville College (private junior college)	245
CC	Clarendon	Clarendon College	969
CC	Borger	Frank Phillips College	772
CC	Ranger	Ranger College	696
CC	Marshall	Texas State Technical College - Marshall	603

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
3,457	Abernathy Public Library	Abernathy
117,063	Abilene Public Library	Abilene
28,500	Sergeant Fernando de la Rosa Memorial Library	Alamo
3,378	Shackelford County Library	Albany
39,938	Alicia Salinas Public Library	Alice
96,214	Allen Public Library	Allen
9,232	Alpine Public Library	Alpine
3,785	Alvarado Public Library	Alvarado
2,294	Alvord Public Library	Alvord
190,695	Amarillo Public Library	Amarillo
30,980	Chambers County Library System	Anahuac
14,786	Andrews County Library	Andrews
313,166	Brazoria County Library System	Angleton
2,430	Anson Public Library	Anson
10,819	Ed & Hazel Richmond Public Library	Aransas Pass
9,054	Archer Public Library	Archer City
365,438	Arlington Public Library System	Arlington
1,490	Stonewall County Library	Aspermont
5,675	Atlanta Public Library	Atlanta
6,996	Aubrey Area Library	Aubrey
754,691	Austin Public Library	Austin
12,120	Wells Branch Community Library	Austin/Wells Branch
14,489	Azle Memorial Library	Azle
3,273	Callahan County Library	Baird
23,728	Balch Springs Library-Learning Center	Balch Springs
5,466	Carnegie Library of Ballinger	Ballinger
8,688	Bandera County Library	Bandera
1,623	Teinert Memorial Public Library	Bartlett
7,218	Bastrop Public Library	Bastrop
26,444	Bay City Public Library	Bay City
70,946	Sterling Municipal Library	Baytown
118,296	Beaumont Public Library System	Beaumont
46,979	Bedford Public Library	Bedford
3,925	Bee Cave Public Library	Bee Cave
24,665	Joe Barnhart Bee County Library	Beeville
16,855	Bellaire City Library	Bellaire
4,097	Bellville Public Library	Bellville
18,216	Lena Armstrong Public Library	Belton
21,234	Benbrook Public Library	Benbrook
3,367	Reagan County Library	Big Lake
35,012	Howard County Library	Big Spring
5,486	Blanco County South Library District	Blanco

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
19,720	Patrick Heath Public Library	Boerne
10,127	Bonham Public Library	Bonham
2,680	Booker School/Public Library	Booker
22,150	Hutchinson County Library	Borger
5,218	Bowie Public Library	Bowie
2,076	Boyd Public Library	Boyd
3,598	Kinney County Public Library	Brackettville
8,283	FM Buck Richards Memorial Library	Brady
9,630	Breckenridge Library	Breckenridge
2,221	Bremond Public Library	Bremond
33,718	Nancy Carol Roberts Memorial Library	Brenham
7,840	Bridge City Public Library	Bridge City
10,278	Bridgeport Public Library	Bridgeport
12,651	Kendrick Memorial Library	Brownfield
247,344	Brownsville Public Library	Brownsville
38,106	Brownwood Public Library	Brownwood
170,058	Bryan+College Station Public Library System	Bryan
9,845	Buda Public Library	Buda
1,856	Buffalo Public Library	Buffalo
2,463	Bullard Community Library	Bullard
24,437	Bulverde/Spring Branch Library	Bulverde
10,811	Burkburnett Library	Burkburnett
36,690	Burleson Public Library	Burleson
42,750	Burnet County Library System	Burnet
4,104	Harrie P Woodson Memorial Library	Caldwell
12,331	Cameron Public Library	Cameron
1,655	Camp Wood Public Library	Camp Wood
3,807	Hemphill County Library	Canadian
17,757	Van Zandt County Library	Canton
35,516	Canyon Area Library	Canyon
21,584	Tye Preston Memorial Library	Canyon Lake
9,996	Dimmit County Public Library	Carrizo Springs
133,187	Carrollton Public Library	Carrollton
23,796	Sammy Brown Library	Carthage
2,680	Castroville Public Library	Castroville
45,028	Zula B Wylie Public Library in Cedar Hill	Cedar Hill
48,937	Cedar Park Public Library	Cedar Park
6,884	Celina Public Library	Celina
5,193	Fannie Brown Booth Memorial Library	Center
892	Elmer P & Jewel Ward Memorial Library	Centerville
11,100	Chandler Public Library	Chandler
3,894	Charlotte Public Library	Charlotte

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
1,723	Chico Public Library Inc	Chico
7,041	Childress Public Library	Childress
3,677	Burton Memorial Library	Clarendon
12,860	Red River County Public Library	Clarksville
1,901	Claude Public Library	Claude
1,901	Richard S and Leah Morris Memorial Library	Claude
29,337	Cleburne Public Library	Cleburne
7,675	Austin Memorial Library	Cleveland
3,442	Nellie Pederson Civic Library	Clifton
42,004	Clint ISD Public Library	Clint/El Paso
8,123	Clyde Public Library	Clyde
4,193	Cockrell Hill Public Library	Cockrell Hill/Dallas
853	Coldspring Area Public Library Inc	Coldspring
7,368	Coleman Public Library	Coleman
22,807	Colleyville Public Library	Colleyville
9,403	Mitchell County Public Library	Colorado City
5,656	Nesbitt Memorial Library	Columbus
9,205	Comanche Public Library	Comanche
10,942	Comfort Public Library	Comfort
18,628	Commerce Public Library	Commerce
451,690	Montgomery County Memorial Library System	Conroe
18,198	Converse Public Library	Converse
38,659	William T Cozby Public Library	Coppell
32,032	Copperas Cove Public Library	Copperas Cove
305,215	Corpus Christi Public Libraries	Corpus Christi
1,595	Mickey Reily Public Library	Corrigan
46,162	Corsicana Public Library	Corsicana
6,886	Alexander Memorial Library	Cotulla
18,014	Crandall-Combine Community Library	Crandall
4,375	Crane County Library	Crane
6,950	JH Wootters Crockett Public Library	Crockett
6,059	Crosby County Library	Crosbyton
2,148	Cross Plains Public Library	Cross Plains
1,336	Foard County Library	Crowell
12,838	Crowley Public Library	Crowley
7,138	Crystal City Memorial Library	Crystal City
6,841	Cuero Public Library	Cuero
2,560	Daingerfield Public Library	Daingerfield
12,725	Dallam-Hartley County Library	Dalhart
1,197,816	Dallas Public Library	Dallas
7,242	Jones Public Library	Dayton
4,769	DeLeon City County Library	De Leon

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
49,047	DeSoto Public Library	De Soto
10,391	Decatur Public Library	Decatur
32,010	Deer Park Public Library	Deer Park
48,879	Val Verde County Library	Del Rio
19,929	East Travis Gateway Library District	Del Valle
622	Grace Grebing Public/School Library	Dell City
34,608	Denison Public Library	Denison
113,383	Denton Public Library	Denton
4,157	Yoakum County/Cecil Bickley Library	Denver City
4,350	Driscoll Public Library	Devine
4,776	TLL Temple Memorial Library & Archives	Diboll
21,532	Dickinson Public Library	Dickinson
3,894	Dilley Public Library	Dilley
8,062	Rhoads Memorial Library	Dimmitt
24,532	Donna Public Library	Donna
31,178	Dripping Springs Community Library	Dripping Springs
3,654	Dublin Public Library	Dublin
21,904	Killgore Memorial Library	Dumas
38,524	Duncanville Public Library	Duncanville
5,631	Eula & David Wintermann Library	Eagle Lake
39,798	Eagle Pass Public Library	Eagle Pass
1,720	Springlake-Earth Community Library	Earth
119,726	Dustin Michael Sekula Memorial Library	Edinburg
14,075	Jackson County Memorial Library	Edna
649,121	El Paso Public Library	El Paso
3,461	Schleicher County Public Library	Eldorado
2,791	Electra Public Library	Electra
30,259	Elgin Public Library	Elgin
8,789	Elsa Public Library	Elsa
10,914	Rains County Public Library	Emory
18,513	Ennis Public Library	Ennis
51,277	Euless Public Library	Euless
6,108	Everman Public Library	Everman
8,981	Fairfield Library	Fairfield
7,223	Ed Rachal Memorial Library	Falfurrias
1,135	Falls City Public Library	Falls City
28,616	Farmers Branch Manske Public Library	Farmers Branch
3,770	Charles J Rike Memorial Library	Farmersville
2,436	Ferris Public Library	Ferris
1,136	Florence Public Library	Florence
42,918	Sam Fore Jr Wilson County Public Library	Floresville
64,699	Flower Mound Public Library	Flower Mound

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
6,446	Floyd County Library	Floydada
12,355	Forest Hill Public Library	Forest Hill
2,342	Jeff Davis County Library	Fort Davis
2,854	Fort Hancock ISD/Public Library	Fort Hancock
12,142	Fort Stockton Public Library	Fort Stockton
741,206	Fort Worth Library	Fort Worth
3,739	Robertson County Library	Franklin
2,751	Frankston Depot Library	Frankston
24,366	Pioneer Memorial Library	Fredericksburg
39,700	Friendswood Public Library	Friendswood
4,123	Friena Public Library	Friena
136,277	Frisco Public Library	Frisco
35,411	Cooke County Library	Gainesville
55,033	Rosenberg Library	Galveston
3,259	City of Garden Ridge Library	Garden Ridge
226,876	Nicholson Memorial Library System	Garland
7,585	Gatesville Public Library	Gatesville
10,518	Live Oak County Library	George West
47,400	Georgetown Public Library	Georgetown
4,881	Giddings Public Library	Giddings
34,567	Upshur County Library	Gilmer
9,646	Lee Public Library	Gladewater
8,490	Somervell County Library	Glen Rose
4,936	Jennie Trent Dew Library	Goldthwaite
7,210	Goliad County Library	Goliad
7,237	Gonzales Public Library	Gonzales
8,903	Library of Graham	Graham
51,182	Hood County Public Library	Granbury
175,396	Grand Prairie Public Library System	Grand Prairie
7,032	Grand Saline Public Library	Grand Saline
1,489	Grapeland Public Library	Grapeland
46,334	Grapevine Public Library	Grapevine
25,557	W Walworth Harrison Public Library	Greenville
8,586	Groesbeck Public Library	Groesbeck
16,144	Groves Public Library	Groves
1,342	Gruver City Library	Gruver
286	Guthrie CSD & King County Consolidated Library	Guthrie
2,855	Hale Center Public Library Inc	Hale Center
2,550	Friench Simpson Memorial Library	Hallettsville
42,409	Haltom City Public Library	Haltom City
8,517	Hamilton Public Library	Hamilton
26,700	Harker Heights Public Library	Harker Heights

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
91,645	Harlingen Public Library	Harlingen
471	Harper Library	Harper
5,866	Haskell County Library	Haskell
1,517	Haslet Public Library	Haslet
3,538	Allen Memorial Public Library	Hawkins
10,661	Smith-Welch Memorial Library	Hearne
43,205	Waller County Library	Hempstead
50,317	Rusk County Library System	Henderson
10,752	Edwards Public Library	Henrietta
19,372	Deaf Smith County Library	Hereford
21,256	Hewitt Public Library	Hewitt
17,389	Hidalgo Public Library	Hidalgo
622	Higgins Public Library	Higgins
8,564	Highland Park Library	Highland Park/dallas
8,456	Hillsboro City Library	Hillsboro
8,024	Genevieve Miller Hitchcock Public Library	Hitchcock
1,121	BJ Hill Library	Holland
8,803	Hondo Public Library	Hondo
1,668	Bertha Voyer Memorial Library	Honey Grove
2,769	Hooks Public Library	Hooks
2,099,451	Houston Public Library	Houston
1,757,728	Harris County Public Library	Houston/HCPL
7,449	Howe Community Library	Howe
1,760	Hughes Springs Area Public Library	Hughes Springs
8,318	McMullen Memorial Library	Huntington
24,982	Huntsville Public Library	Huntsville
37,337	Hurst Public Library	Hurst
5,338	Hutchins-Atwell Public Library	Hutchins
14,698	Hutto Public Library	Hutto
2,532	Idalou Community Library	Idalou
1,103	Imperial Public Library	Imperial
12,674	Ingleside Public Library	Ingleside
6,355	Tom Burnett Memorial Library	Iowa Park
2,262	Iraan Public Library	Iraan
216,290	Irving Public Library	Irving
9,044	Gladys Johnson Ritchie Public Library	Jacksboro
14,544	Jacksonville Public Library	Jacksonville
7,590	Jasper Public Library	Jasper
808	Kent County Library	Jayton
2,106	Jefferson Carnegie Library	Jefferson
5,011	Johnson City Library	Johnson City
1,834	Jonestown Community Library	Jonestown

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
23,847	Joshua School & Public Library	Joshua
8,790	Jourdanton Community Library	Jourdanton
4,607	Kimble County Library	Junction
3,902	Justin Community Library	Justin
5,651	Karnes City Public Library	Karnes City
10,025	Kaufman County Library	Kaufman
39,627	Keller Public Library	Keller
2,749	Kendalia Public Library	Kendalia
6,123	Kenedy Public Library	Kenedy
6,763	Kennedale Public Library	Kennedale
7,110	Winkler County Library	Kermit
49,625	Butt-Holdsworth Memorial Library	Kerrville
15,244	Kilgore Public Library	Kilgore
32,477	Robert J Kleberg Public Library	Kingsville
3,967	Kirbyville Public Library	Kirbyville
5,157	Kountze Public Library	Kountze
4,997	Krum Public Library	Krum
37,809	Kyle Public Library	Kyle
10,319	Bailey H Dunlap Memorial Library	La Feria
4,641	Fayette Public Library	La Grange
6,188	La Joya Municipal Library	La Joya
16,724	La Marque Public Library	La Marque
6,041	Lago Vista Public Library	Lago Vista
4,405	Laguna Vista Public Library	Laguna Vista
39,546	Lake Cities Library	Lake Dallas
29,198	Lake Travis Community Library	Lake Travis/austin
4,584	Mary Lou Reddick Public Library	Lake Worth
6,805	Lakehills Area Library	Lakehills
13,833	Dawson County Public Library	Lamesa
6,681	Lampasas Public Library	Lampasas
36,361	Lancaster Veterans Memorial Library	Lancaster
236,091	Laredo Public Library	Laredo
96,080	Helen Hall Library	League City
1,655	Real County Public Library	Leakey
26,521	Leander Public Library	Leander
10,151	Leon Valley Public Library	Leon Valley
1,990	Leonard Public Library	Leonard
22,935	Hockley County Memorial Library	Levelland
114,372	Lewisville Public Library	Lewisville
8,397	Liberty Municipal Library	Liberty
11,427	Liberty Hill Public Library	Liberty Hill
4,818	Lindale Library	Lindale

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
34,479	Little Elm Public Library	Little Elm
8,451	Lamb County Library	Littlefield
5,335	Murphy Memorial Library	Livingston
19,301	Llano County Library System	Llano
12,698	Dr Eugene Clark Library	Lockhart
1,379	Lone Oak Area Public Library	Lone Oak
98,357	Longview Public Library	Longview
7,832	Ethel L Whipple Memorial Library	Los Fresnos
258,339	Lubbock Public Library	Lubbock
35,067	Kurth Memorial Library	Lufkin
5,411	JB Nickells Memorial Library	Luling
29,013	Lumberton Public Library	Lumberton
5,031	Lytle Public Library	Lytle
4,155	Tri-County Library	Mabank
11,309	Madison County Library	Madisonville
9,435	Red Waller Community Library	Malakoff
56,368	Mansfield Public Library	Mansfield
1,981	Marfa Public Library	Marfa
5,967	Pauline and Jane Chilton Memorial Marlin Public Library	Marlin
58,399	Marshall Public Library	Marshall
3,464	Nancy Nail Memorial Library	Mart
4,012	Mason County M Beven Eckert Memorial Library	Mason
1,210	Motley County Library	Matador
6,673	Mathis Public Library	Mathis
201,682	McAllen Public Library	McAllen
1,436	Upton County Public Library	McCamey
7,824	McGinley Memorial Public Library	McGregor
149,744	McKinney Public Library System	McKinney
934	Lovett Memorial Library McLean	McLean
4,807	Medina Community Library	Medina
5,362	Melissa Public Library	Melissa
3,353	Memphis Public Library	Memphis
2,242	Menard Public Library	Menard
24,178	Dr Hector P Garcia Memorial Library	Mercedes
1,493	Meridian Public Library	Meridian
2,590	Merkel Public Library	Merkel
1,599	Irion County Library	Mertzon
139,824	Mesquite Public Library	Mesquite
14,796	Gibbs Memorial Library	Mexia
136,872	Midland County Public Library	Midland
32,763	AH Meadows Library	Midlothian
9,339	Mineola Memorial Library	Mineola

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
29,777	Boyce Ditto Public Library	Mineral Wells
119,661	Speer Memorial Library	Mission
10,658	Ward County Library	Monahans
2,151	Moody Community Library	Moody
3,127	Cochran County Love Memorial Library	Morton
320	Mount Calm Public Library	Mount Calm
15,564	Mount Pleasant Public Library	Mount Pleasant
8,387	Franklin County Library	Mount Vernon
3,026	Muenster Public Library	Muenster
5,158	Muleshoe Area Public Library	Muleshoe
3,719	Munday City-County Library	Munday
64,524	Judy B McDonald Public Library	Nacogdoches
1,378	Naples Public Library	Naples
25,031	Navasota Public Library	Navasota
17,547	Marion & Ed Hughes Public Library	Nederland
4,550	New Boston Public Library	New Boston
57,740	New Braunfels Public Library	New Braunfels
4,620	New Waverly Public Library	New Waverly
1,728	Newark Public Library	Newark
14,445	Newton County Public Library	Newton
4,973	The Aphne Pattillo Nixon Public Library	Nixon
3,033	Nocona Public Library	Nocona
777	Noonday Community Library	Noonday/Tyler
63,343	North Richland Hills Public Library	North Richland Hills
3,226	Odem Public Library	Odem
137,130	Ector County Library	Odessa
9,647	Olney Community Library and Arts Center	Olney
3,806	Olton Area Library	Olton
1,764	Onalaska Public Library	Onalaska
18,595	Orange Public Library	Orange
3,719	Crockett County Public Library	Ozona
1,505	Bicentennial City-County Library	Paducah
10,258	Palacios Library Inc	Palacios
42,544	Palestine Public Library	Palestine
21,601	Lovett Memorial Library Pampa	Pampa
6,182	Carson County Public Library	Panhandle
25,171	Paris Public Library	Paris
149,043	Pasadena Public Library	Pasadena
9,146	Pearsall Public Library	Pearsall
13,783	Reeves County Library	Pecos
6,837	Penitas Public Library	Penitas
10,223	Perry Memorial Library	Perryton

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
46,636	Pflugerville Community Library	Pflugerville
109,322	Pharr Memorial Library	Pharr
4,635	Pilot Point Community Library	Pilot Point
850	Arthur Temple Sr Memorial Library	Pineland
12,401	Pittsburg-Camp County Public Library	Pittsburg
3,722	Yoakum County Library	Plains
28,141	Unger Memorial Library	Plainview
297,074	Plano Public Library System	Plano
20,287	Pleasanton Public Library	Pleasanton
1,677	Betty Foster Public Library	Ponder
3,480	William R Bill Ellis Memorial Library	Port Aransas
53,818	Port Arthur Public Library	Port Arthur
7,075	Port Isabel Public Library	Port Isabel
21,381	Calhoun County Public Library	Port Lavaca
13,040	Effie & Wilton Hebert Public Library	Port Neches
15,099	Bell/Whittington Public Library	Portland
5,376	Post Public Library	Post
7,403	Poteet Public Library	Poteet
3,296	Pottsboro Area Public Library	Pottsboro
1,313	Tri-Community Library	Prairie Lea
4,426	City of Presidio Library	Presidio
7,774	Lois Nelson Public Library	Princeton
10,718	Prosper Community Library	Prosper
4,139	Thompson Sawyer Public Library	Quanah
1,637	Caprock Public Library	Quitaque
5,010	Quitman Public Library	Quitman
4,441	Ranger City Library	Ranger
1,919	Rankin Public Library	Rankin
22,134	Reber Memorial Library	Raymondville
10,769	Red Oak Public Library	Red Oak
7,383	Dennis M O Connor Public Library	Refugio
99,223	Richardson Public Library	Richardson
7,801	Richland Hills Public Library	Richland Hills
547,251	Fort Bend County Libraries	Richmond
13,834	Rio Grande City Public Library	Rio Grande City
3,330	Rio Hondo Public Library	Rio Hondo
7,427	River Oaks Public Library	River Oaks
5,962	Roanoke Public Library	Roanoke
3,320	Coke County Library	Robert Lee
31,514	Nueces County Keach Family Library	Robstown
12,426	Lucy Hill Patterson Memorial Library	Rockdale
22,434	Aransas County Public Library	Rockport

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
2,002	Claud H Gilmer Memorial Library	Rocksprings
62,213	Rockwall County Library	Rockwall
1,412	D Brown Memorial Library	Rosebud
3,974	Rotan Public Library	Rotan
99,887	Round Rock Public Library System	Round Rock
90	Round Top Family Library	Round Top
56,199	Rowlett Public Library	Rowlett
9,349	CF Goodwin Public Library	Royse City
1,915	Runge Public Library	Runge
3,711	Singletery Memorial Library	Rusk
1,803	Sabinal Public Library	Sabinal
20,329	Sachse Public Library	Sachse
19,806	John Ed Keeter Public Library	Saginaw
7,335	Salado Public Library District	Salado
110,224	Tom Green County Library System	San Angelo
1,662,577	San Antonio Public Library	San Antonio
8,865	San Augustine Public Library	San Augustine
34,270	San Benito Public Library	San Benito
12,682	Duval County/San Diego Public Library	San Diego
52,574	San Juan Public Library	San Juan
60,585	San Marcos Public Library	San Marcos
6,131	Rylander Memorial Library	San Saba
984	Terrell County Public Library	Sanderson
8,313	Sanger Public Library	Sanger
14,088	Mae S Bruce Library	Santa Fe
77,631	Schertz Public Library	Schertz
2,852	Schulenburg Public Library	Schulenburg
14,835	Seagoville Public Library	Seagoville
9,895	Virgil & Josephine Gordon Memorial Library	Sealy
38,952	Seguin-Guadalupe County Public Library	Seguin
17,526	Gaines County Library	Seminole
5,693	The Library at Cedar Creek Lake	Seven Points
3,726	Baylor County Free Library	Seymour
5,472	Shallowater School County Library	Shallowater
2,951	Shamrock Public Library	Shamrock
2,319	Shepherd Public Library	Shepherd
38,747	Sherman Public Library	Sherman
2,069	Shiner Public Library	Shiner
16,060	Silsbee Public Library	Silsbee
7,649	Sinton Public Library	Sinton
6,888	Slaton City Library	Slaton
15,504	Smithville Public Library	Smithville

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
16,921	Scurry County Library	Snyder
4,128	Sutton County Library	Sonora
26,575	Southlake Public Library	Southlake
4,271	Hansford County Library	Spearman
7,992	Springtown Public Library	Springtown
2,444	Dickens County Spur Public Library	Spur
3,124	Stamford Carnegie Library	Stamford
4,799	Martin County Library	Stanton
17,123	Stephenville Public Library	Stephenville
1,143	Sterling County Public Library	Sterling City
3,034	Sherman County Public Library	Stratford
5,130	Sunnyvale Public Library	Sunnyvale
15,216	County-City Library	Sweetwater
4,115	Taft Public Library	Taft
5,915	City County Library	Tahoka
15,191	Taylor Public Library	Taylor
10,835	Teague Public Library	Teague
66,102	Temple Public Library	Temple
23,654	Riter C Hulsey Public Library	Terrell
36,411	Texarkana Public Library	Texarkana
51,985	Moore Memorial Public Library	Texas City
43,667	The Colony Public Library	The Colony
1,641	Depot Public Library	Throckmorton
1,594	Lucile Teague Library	Tom Bean
2,697	Blanche K Werner Public Library	Trinity
1,869	Cameron-J Jarvis Troup Municipal Library	Troup
7,854	Swisher County Library	Tulia
96,900	Tyler Public Library	Tyler
18,530	Universal City Public Library	Universal City
23,068	University Park Public Library	University Park/Dallas
293	Utopia Memorial Library	Utopia
24,494	El Progreso Memorial Library	Uvalde
1,203	Valley Mills Public Library	Valley Mills
4,648	Van Alstyne Public Library	Van Alstyne
2,398	Van Horn City County Library	Van Horn
2,052	Oldham County Public Library	Vega
9,583	Joe A Hall High School and Community Library	Venus
13,535	Carnegie City-County Library	Vernon
86,793	Victoria Public Library	Victoria
10,579	Vidor Public Library	Vidor
195,796	Waco-McLennan County Library	Waco
1,065	Waelder Public Library	Waelder

**Appendix B**  
**Current TexShare Participants**  
**Public Libraries**

<b>Population</b>	<b>Library</b>	<b>City</b>
14,425	Austin County Library System	Wallis
5,362	Waskom Public Library	Waskom
23,497	Watauga Public Library	Watauga
29,621	Nicholas P Sims Library & Lyceum	Waxahachie
75,917	Weatherford Public Library	Weatherford
3,329	Weimar Public Library	Weimar
3,057	Collingsworth Public Library	Wellington
792	Rube Sessions Memorial Library	Wells
55,391	Mayor Joe V Sanchez Public Library	Weslaco
4,404	West Public Library	West
25,571	Westbank Community Library District	West Lake Hills
3,634	Tawakoni Area Public Library	West Tawakoni
41,280	Wharton County Library	Wharton
2,459	Wheeler Public Library	Wheeler
6,603	White Oak School Community Library	White Oak
16,116	White Settlement Public Library	White Settlement
7,660	Whitehouse Community Library	Whitehouse
5,787	Whitesboro Public Library	Whitesboro
2,443	Whitewright Public Library	Whitewright
2,087	Lake Whitney Library	Whitney
104,553	Wichita Falls Public Library	Wichita Falls
3,682	Gilliam Memorial Public Library	Wilmer
17,691	Wimberley Village Library	Wimberley
9,776	Gilbreath Memorial Library	Winnsboro
5,035	Winters Public Library	Winters
3,256	Wolfe City Public Library	Wolfe City
4,130	City of Wolfforth Library	Wolfforth
21,766	Allan Shivers Library & Museum	Woodville
47,103	Rita & Truett Smith Public Library	Wylie
5,815	Carl & Mary Welhausen Library	Yoakum
2,092	Yorktown Public Library	Yorktown
14,018	Olga V Figueroa Zapata County Public Library	Zapata

**Appendix B**  
**Current TexShare Participants**  
**Libraries of Clinical Medicine**

<b>Type</b>	<b>City</b>	<b>Institution</b>	<b>Total FTE's (Fall 2012)</b>
LCM	Dallas	Baylor Health Sciences Center	n/a
LCM	Temple	Scott & White Memorial Hospital	n/a
LCM	Fort Worth	Texas Health Resources	n/a
LCM	Austin	Texas Medical Association	n/a

Minimum Requirements Checklist

**ALL BOXES MUST BE CHECKED "YES" IN ORDER TO BE CONSIDERED. RESPONSES WITH "NO" WILL BE ELIMINATED.**

Respondent Name:				
Criteria:	Meets Minimum		For TSLAC	Notes:
	Yes	No		
Databases offered must be accessible via the Internet, and viewable using standard Internet browsers for Windows, Macintosh, and Linux operating systems (such as Explorer, Firefox, and Google Chrome).				
Primary interface of offered databases must be in the English language.				
Offered databases must be full-production versions that are completely implemented and thoroughly tested. Products that are currently being alpha or beta-tested at the time of statewide trials and/or demonstrations will not be considered.				
Offered databases must be priced so that all copyright and royalty fees are included. Products that do not include copyright and royalty fees will not be considered.				
Offered databases must provide access authentication via IP address plus one or more other acceptable alternate means (login/password, referring URL, or URL with embedded login and password), as required by participating libraries				
TexShare defines "remote access" as access from workstations <u>off-site</u> from buildings on the same telecommunications network as the member library (e.g., college campus for an academic library, city hall for a public library, etc), or access from the home, office or other outside-the-library locations used by the library's registered users.				
End users must be able to print, download, and e-mail results of the database searches for their personal use, at no additional charge.				

**Minimum Requirements Checklist**

**ALL BOXES MUST BE CHECKED "YES" IN ORDER TO BE CONSIDERED. RESPONSES WITH "NO" WILL BE ELIMINATED.**

<b>Respondent Name:</b>				
<b>Criteria:</b>	<b>Meets Minimum</b>			
	<b>Yes</b>	<b>No</b>	<b>For TSLAC</b>	<b>Notes:</b>

**Search Engine (Section II)**

Is search engine Z39.50 compliant?				
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**Delivery (Section IV)**

Access would be provided through the TexShare program to the following entities:

Authorized remote users of academic institutions				
Authorized remote users of public libraries				
Authorized remote users of public/school library combinations				
Access to resources would be available to public libraries, academic libraries AND public/school library combinations				

**Linking and Marc Records (Section VI)**

Is search engine Open URL Compliant?				
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**Proposed System Performance (Section VIII)**

Respondent can provide 98% availability based upon 24/7 x 365				
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**Statistics Reports (Section IX)**

Statistical reports are available at the state (consortial) level				
Statistical reports are available over the Internet				

**ADA Compliance (Section XII)**

Does resource/database support ADA compliant browser				
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**Appendix D**  
**RFO Submittal Requirements Checklist**

- Please present one original and nine copies of your proposal in a three-ring binder, in the following order, organized by the corresponding tab number.
- Also provide entire proposal on a CD-Rom
- Proposal pages should be numbered and contain an organized, paginated, table of contents corresponding to the section and pages of the Proposal.
- **Response must include all of these elements in order to be considered!**

Requested Item	Tab Number	Vendor Initials	For TSLAC
Minimum Requirements Checklist (ESBD Package 2, Appendix C)	1		
RFO Submittal Checklist (ESBD Package 2, Appendix D)	1		
Signed Proposal Coversheet (ESBD-Package 1)	2		
RFO Response Form – II. CONTENT (ESBD- Package 3)	3		
RFO Response Form – III. SEARCH ENGINE (ESBD – Package 3)	4		
RFO Response Form – IV. DELIVERY (ESBD – Package 3)	5		
RFO Response Form – V. COST ESTIMATE (ESBD – Package 3)	6		
RFO Response Form - VI. LINKING AND MARC RECORDS (ESBD – Package 3)	7		
RFO Response Form – VII. SUPPORT FOR CONTRACT (ESBD – Package 3)	8		
RFO Response Form – VIII. PROPOSED SYSTEM PERFORMANCE (ESBD – Package 3)	9		

**Appendix D**  
**RFO Submittal Requirements Checklist**

RFO Response Form – IX. STATISTICS REPORTS (ESBD – Package 3)	10		
RFO Response Form – X. TRAINING AND BRANDING (ESBD – Package 3)	11		
RFO Response Form – XI. LICENSING (ESBD – Package 3)	12		
RFO Response Form – XII. ADA COMPLIANCE (ESBD – Package 3)	13		
RFO Response Form – XIII. STATEWIDE TRIAL (ESBD – Package 3)	14		
Subcontractor Information (ESBD – Package 2, Section 2.5)	15		
HUB Subcontracting Form (ESBD – Package 2, Section 2.5)	16		
Terms and Conditions Issues Form (Package 2, Appendix F)	17		
Respondent’s Terms and Conditions/Contract	18		
If applicable, Addenda	19		

**Appendix E**  
**Texas State Library and Archives Commission**  
**Terms and Conditions**

All of the following terms and conditions are hereby made part of this bid and any contract with the Texas State Library and Archives Commission (TSLAC) by reference. Submitting a bid or signing a contract with a false statement is a material breach of contract and shall void the submitted bid 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 States 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.

1. **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.
2. **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.
3. **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. Vendor agrees that in the event of such termination, the TSLAC will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.
4. **Public Information Act.** Information, documentation, and other material in connection with this bid or contract may be subject to public disclosure pursuant to Chapter 552.021 of the Texas Government Code (the "Public Information Act"). Any part of a submitted bid that is of a confidential or proprietary nature must be clearly and prominently marked on each page as such by the Vendor.
5. **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.
6. **Specifications.**
  - Unless otherwise specified, items shall be new and unused and of current production.
  - All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
  - The State will not be bound by any oral statement or representation contrary to the written specifications.
  - Manufacturer's standard warranty shall apply unless otherwise stated.
  - Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised under Chapter 2155.067 of the Texas Government Code. If bidding on other than references, bid should show manufacturer, brand, or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require Vendor to furnish specified brand names, numbers, etc.
  - Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the Vendor, on request, at Vendor's expense. Each sample should be marked with Vendor's name and address, and requisition number. Do not enclose in or attach bid to a sample.
7. **Delivery.**
  - Delivery shall be made during normal working hours (8am-5pm, CST), unless prior approval has been obtained from the TSLAC.
  - No substitutions permitted without written approval of the TSLAC's Purchasing Dept.
  - 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.
8. **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

**Appendix E**  
**Texas State Library and Archives Commission**  
**Terms and Conditions**

obligations under this contract.

- 9. 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 bid 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.
- 10. Payment.** 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. Any payments later than 30 days from uncontested invoice will start to accrue interest.
- 11. 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 Chapter 2260, Texas Government Code, 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 Chapter 2260, subchapter B, of the Texas Government Code. 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 Chapter 2260, subchapter C, of the Texas Government Code. The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code 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.
- 12. 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 bid or contract.
- 13. Compensation.** Pursuant to Chapter 2155.004 of the Texas Government Code, the Vendor has not received compensation for participation in the preparation of the specifications for this bid or contract.
- 14. 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.
- 15. Ineligibility.** Under Chapter 2155.004 of the Texas Government Code, the vendor certifies that the individual or business entity named in this bid 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.
- 16. Indemnification. THE VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TSLAC, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. VENDOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TSLAC.**

**THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TSLAC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TSLAC OR ITS EMPLOYEES.**

**Appendix E**  
**Texas State Library and Archives Commission**  
**Terms and Conditions**

- 17. 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.
- 18. Executive Head of a State Agency.** Pursuant to §669.003, Government Code, 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 Proposal, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years. Vendor certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with executive heard of a state agency. If Section 669.03 applies, Vendor will complete the following information in order for the bid to be evaluated: Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Vendor; and Date of Employment with Vendor.
- 19. State Auditor's Clause.** Vendor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditors 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 Auditors 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.
- 20. Patents and Copyrights.** The Vendor agrees to protect the State of Texas from claims involving infringement of patents or copyrights.
- 21. 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).
- 22. 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.
- 23. 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.
- 24. 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.
- 25. 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.
- 26. 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.
- 27. 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.

**Appendix E**  
**Texas State Library and Archives Commission**  
**Terms and Conditions**

- 28. 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.
- 29. 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.
- 30. 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.
- 31. 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.
- 32. Immigration.** Vendor represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.
- 33. 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.
- 34. 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.

**Appendix E**  
**Texas State Library and Archives Commission**  
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- 35. 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.
- 36. Ethics.** Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Chapter 2155.003 of the Texas Government Code. 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 bid 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.
- 37. Convictions in connection with Hurricane Katrina, Hurricane Rita, and subsequent disasters.** Per Senate Bill 608, 80th Legislative Session, TSLAC will not accept bids, 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.
- 38. 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 bid awards.
- 39. 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.
- 40. 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 bid 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.
- 41. Convenience of the State of Texas.** The TSLAC reserves the right to terminate the Contract at any time, in whole or in part, without penalty, by providing 30 calendar days' advance written notice, if the TSLAC determines that such termination is in the best interest of the state. In the event of such termination, the Vendor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TSLAC shall be liable for payments for any goods or services ordered from the Vendor before the termination date.

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.

- 42. 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.
- 43. 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.
- 44. 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 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.

**Appendix E**  
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- 45. Insurance & Other Security.** 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: Standard Workers Compensation Insurance covering all personnel who will provide services under the Contract; 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. 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 (3) 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.
- 46. 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 and 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.
- 47. Vendor Performance.** The TSLAC may monitor the performance of the Contract issued under this Bid. All services and goods under the Contract shall be performed at an acceptable quality level 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.

State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the commission or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exemption from CPA/TPASS procurement rules and procedures.

Past Performance: A Vendor's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Vendors may fail this selection criterion for any of the following conditions:

- 1) A score of less than 90% in the Vendor Performance System,
- 2) Currently under a Corrective Action Plan through the CPA,
- 3) Having repeated negative Vendor Performance Reports for the same reason,
- 4) Having purchase orders that have been cancelled in the previous 12 months for non-performances (i.e. late delivery, etc.).

Vendor performance information is located on the CPA website at:  
[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/)

- 48. Change Management.** Vendor shall assign only qualified personnel to this Contract. Vendor, in its 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 and obtain written approval 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.
- 49. 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.
- 50. 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

**Appendix E**  
**Texas State Library and Archives Commission**  
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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.

- 51. Change in Federal or State Requirements.** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either the TSLAC or the Vendor cannot reasonably fulfill the 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 the Contract.
- 52. 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 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 PO resulting from this Bid. 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 Bid, 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 Bid.
- 53. Independent Vendor.** Vendor or Vendor's employees, representatives, agents, and any subcontractors shall serve as an independent contracting in providing services under any PO. 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.
- 54. Convenience of the State of Texas.** The TSLAC reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if the TSLAC determines that such termination is in the best interest of the state. In the event of such a termination, the Vendor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TSLAC shall be liable for payments for any goods and services ordered from the Respondent before the termination date.
- 55. 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.
- 56. 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.*).
- 57. 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/>.



**Appendix G**  
**LSTA Terms and Conditions**

**I. GENERAL TERMS AND CONDITIONS**

- A. The Contractor will comply with the following parts of the Governor's Office of Budget and Planning, UGMS revised June 2004, located at:  
[www.governor.state.tx.us/files/state-grants/UGMS062004.doc](http://www.governor.state.tx.us/files/state-grants/UGMS062004.doc).
- Part I. Cost Principles for State and Local Governments and Indian Tribal Governments (formerly from OMB Circular A-87), Cost Principles for Non-Profit Organizations (formerly OMB Circular A-122), Cost Principles for Educational Institutions (formerly OMB Circular A-21), or Federal Acquisition Regulation (FAR) 31.2, as applicable.
- Part II. State Uniform Administrative Requirements for Grants and Cooperative Agreements (Adapted from OMB Circulars A-102 and A-122)
- Part III. State of Texas Single Audit Circular (Adapted from OMB Circular A-133)
- B. For grants funded with Federal funds, Contractor will also comply with the Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (revised 6/97), located at:  
[www.whitehouse.gov/omb/grants/grants\\_circulars.html](http://www.whitehouse.gov/omb/grants/grants_circulars.html).
- C. The Contractor will comply with the IMLS' 45 Code of Federal Regulations, Part 1183, Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (adapted from OMB Circular A-102).
- D. Contractor 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. Contractor 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. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Sub-Contractors through Contractor, and the requirement to cooperate, is included in any sub-grant awarded.
- E. The Contractor agrees to maintain all financial and programmatic records, supporting documents, statistical records, and other records relating to this grant award for three years 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.
- F. The Contractor 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 faxed asset inventory; and or, (3) any other issues identified in Contractor's internal audit report or grant activities. Drafts of this procedural documentation will be submitted to Contractor by dates established mutually between Grantor and Grantee. Grantor will provide review and guidance to enable final versions to be approved on or before established deadlines.

**Appendix G**  
**LSTA Terms and Conditions**

**II. ENFORCEMENT**

- A. Remedies for noncompliance. If a Contractor or Sub-Contractor materially fails to comply with any term of the contract, whether stated in a state 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 Contractor or Sub-Contractor, 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 Contractor's or Sub-Contractor'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 Contractor or Sub-Contractor an opportunity for such hearing, appeal, or other administrative proceeding to which the Contractor or Sub-Contractor is entitled under any statute or regulation applicable to the action involved.
- C. Effects of suspension and termination. Costs of Contractor or Sub-Contractor resulting from obligations incurred by the Contractor or Sub-Contractor 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 Contractor or Sub-Contractor 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 Contractor or Sub-Contractor 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 Contractor or Sub-Contractor from being subject to "Debarment and Suspension" under Executive Order 12549 (see UGMS Part III, Subpart C, Sec 35) and state law.



A  
TEXSHARE  
DATABASE  
PROGRAM  
FOR THE

# TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

**Request for Offer: 306-14-8016 / Proposal valid through July 5, 2013**



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Minimum Requirements Checklist

**ALL BOXES MUST BE CHECKED "YES" IN ORDER TO BE CONSIDERED. RESPONSES WITH "NO" WILL BE ELIMINATED.**

Respondent Name:				
Criteria:	Meets Minimum		For TSLAC	Notes:
	Yes	No		
Databases offered must be accessible via the Internet, and viewable using standard Internet browsers for Windows, Macintosh, and Linux operating systems (such as Explorer, Firefox, and Google Chrome).	X			
Primary interface of offered databases must be in the English language.	X			
Offered databases must be full-production versions that are completely implemented and thoroughly tested. Products that are currently being alpha or beta-tested at the time of statewide trials and/or demonstrations will not be considered.	X			
Offered databases must be priced so that all copyright and royalty fees are included. Products that do not include copyright and royalty fees will not be considered.	X			
Offered databases must provide access authentication via IP address plus one or more other acceptable alternate means (login/password, referring URL, or URL with embedded login and password), as required by participating libraries	X			
TexShare defines "remote access" as access from workstations <u>off-site</u> from buildings on the same telecommunications network as the member library (e.g., college campus for an academic library, city hall for a public library, etc), or access from the home, office or other outside-the-library locations used by the library's registered users.	X			
End users must be able to print, download, and e-mail results of the database searches for their personal use, at no additional charge.	X			

Minimum Requirements Checklist

**ALL BOXES MUST BE CHECKED "YES" IN ORDER TO BE CONSIDERED. RESPONSES WITH "NO" WILL BE ELIMINATED.**

<b>Respondent Name:</b>				
<b>Criteria:</b>	<b>Meets Minimum</b>			
	<b>Yes</b>	<b>No</b>	<b>For TSLAC</b>	<b>Notes:</b>

**Search Engine (Section II)**

Is search engine Z39.50 compliant?		X		allowed per Addendum 1
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**Delivery (Section IV)**

Access would be provided through the TexShare program to the following entities:

Authorized remote users of academic institutions	X			
Authorized remote users of public libraries	X			
Authorized remote users of public/school library combinations	X			
Access to resources would be available to public libraries, academic libraries AND public/school library combinations	X			

**Linking and Marc Records (Section VI)**

Is search engine Open URL Compliant?		X		allowed per Addendum 1
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**Proposed System Performance (Section VIII)**

Respondent can provide 98% availability based upon 24/7 x 365	X			
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**Statistics Reports (Section IX)**

Statistical reports are available at the state (consortial) level	X			
Statistical reports are available over the Internet	X			

**ADA Compliance (Section XII)**

Does resource/database support ADA compliant browser	X			
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**Appendix D**  
**RFO Submittal Requirements Checklist**

- Please present one original and nine copies of your proposal in a three-ring binder, in the following order, organized by the corresponding tab number.
- Also provide entire proposal on a CD-Rom
- Proposal pages should be numbered and contain an organized, paginated, table of contents corresponding to the section and pages of the Proposal.
- **Response must include all of these elements in order to be considered!**

Requested Item	Tab Number	Vendor Initials	For TSLAC
Minimum Requirements Checklist (ESBD Package 2, Appendix C)	1	RH	
RFO Submittal Checklist (ESBD Package 2, Appendix D)	1	RH	
Signed Proposal Coversheet (ESBD-Package 1)	2	RH	
RFO Response Form – II. CONTENT (ESBD- Package 3)	3	RH	
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RFO Response Form – IV. DELIVERY (ESBD – Package 3)	5	RH	
RFO Response Form – V. COST ESTIMATE (ESBD – Package 3)	6	RH	
RFO Response Form - VI. LINKING AND MARC RECORDS (ESBD – Package 3)	7	RH	
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**Appendix D**  
**RFO Submittal Requirements Checklist**

RFO Response Form – IX. STATISTICS REPORTS (ESBD – Package 3)	10	RH	
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RFO Response Form – XI. LICENSING (ESBD – Package 3)	12	RH	
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HUB Subcontracting Form (ESBD – Package 2, Section 2.5)	16	RH	
Terms and Conditions Issues Form (Package 2, Appendix F)	17	RH	
Respondent’s Terms and Conditions/Contract	18	RH	
If applicable, Addenda	19	RH	

## Offer Coversheet

Attachment B

RFP #:

## Agency to Invoice:

Accounting Department  
Texas State Library and Archives Commission  
P.O. Box 12516  
Austin, Texas 78711  
512-463-5471

## Delivery Address:

Texas State Library and Archives  
Commission  
1201 Brazos Street, Room 309  
Austin, Texas 78701

## Submittal Information

This page must be signed and submitted with the proposal packet by the date and time listed in Section 3.1.

Coversheets not signed or submitted after time and date listed in Section 3.1 will be disqualified.

## Vendor Information:

Vendor Name: ProQuestPhone Number: 800.521.0600Address: 789 E. Eisenhower ParkwayFax Number: 888.241.5612City, State, Zip: Ann Arbor, MI 48108

If applicable, DIR Contract#: \_\_\_\_\_

E-mail: craig.burin@proquest.com

If applicable, HUB Information: \_\_\_\_\_

Vendor ID #: 1,392,053,855,300Federal ID (EID)#: 39-2053855

The Vendor ID Number is the Payee Identification Number assigned and used by the Comptroller of Public Accounts of Texas to process payment for goods/services. Enter this number in the box above.

If this number is not known, please visit <http://www.window.state.tx.us/taxinfo/taxforms/ap-152.pdf> Please also enter you Federal Employers Identification number in the box provided above.

In an effort to minimize identity theft, every company MUST have an Employer Identification Number (EIN), prior to award of a contract. For information on obtaining your EIN, you may call the IRS at 800-829-4933 or visit <http://www.irs.gov/businesses/>

## Preferences

In case of tie bids, one or more preferences described in TAC Rule 113.8 and listed below will be used to make an award. Tie bids which cannot be resolved by application of one or more preferences shall be made by drawing lots. Please refer to 2.38 of the Texas Procurement Manual for more information on preferences.

- |   |   |
|---|---|
| <input type="checkbox"/> Supplies, materials or equipment produced in TX/offered by Texas bidder*   | <input type="checkbox"/> USA produced supplies, materials or equipment                |
| <input type="checkbox"/> Agricultural products produced or grown in Texas   | <input type="checkbox"/> Products of person with mental or physical disabilities      |
| <input type="checkbox"/> Agricultural products & services offered by TX bidders*  | <input type="checkbox"/> Energy Efficient Products                                    |
| <input type="checkbox"/> Products produced at facilities located on formerly contaminated property  | <input type="checkbox"/> Rubberized asphalt paving material                           |
| <input type="checkbox"/> Products & services from economically depressed or blighted areas  | <input type="checkbox"/> Recycled motor oil & lubricants                              |
| <input type="checkbox"/> Products made of recycled, remanufactured, or environmentally sensitive materials, including recycled steel  | <input type="checkbox"/> Vendors that meet or exceed air quality standards            |
| <input type="checkbox"/> Texas Business that is owned by service-disabled veteran*  | <input type="checkbox"/> Recycled or Reused Computer Equipment or Other Manufacturers |
| <input type="checkbox"/> The commission and all state agencies making purchase of vegetation for landscaping purposes, including plants, shall give preference to TX vegetation native to the region if the cost to the state is not greater and the quality is not inferior. | <input type="checkbox"/> Foods of Higher Nutritional Value                            |

\* If a Texas address is shown as the address of the bidder, bidder will be considered a Texas Resident Bidder as defined in Rule 1 TAC 113.2, unless bidder states otherwise.

Type Name: Cathleen MaySignature & Date:  April 5, 2013

Quote FOB Destination, freight prepaid &amp; allowed unless otherwise stated within the specifications.

Delivery in 7 days, Cash discount     % N/A days

Cash discounts are not considered in determining award. Cash discounts offered will be taken if earned.

**Late and/or unsigned bids will be disqualified.****Person signing must have the authority to bind the company in a contract.**

## Agency Contact

## Physical Address

## Delivery Notice

Jill Sutherland CTPM, CTCM Phone: 512-936-2774  
Email: [jsutherland@tsl.state.tx.us](mailto:jsutherland@tsl.state.tx.us) Fax: 512-475-3393

1201 Brazos Street  
Austin, Texas 78701  
Room: 309

If bid will arrive via hand delivery or mail, bid must be placed in an envelope with the bid opening date, time, and requisition number annotated immediately below the return address on a SEALED ENVELOPE.



Request for Offer Response Form

Texas State Library and Archives Commission - TexShare Database Program

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.**

**I. INSTRUCTIONS**

<i>General Instructions</i>	<i>Table of Contents</i>	
1. Responses must be submitted per instructions in Appendix D. 2. If desired, you may create your own response form. However, it must be outlined as you will see in the pages to follow. 3. Include page numbers. 4. Please place your Company Name, Contact Name, and Date as a footer in this document. 5. Fill out only the applicable sections. If not applicable, put "NA" next to question.  <p style="text-align: center;"><b>ALL QUESTIONS MUST BE ANSWERED!</b></p>	Section	Page Number
	II. Content	2
	III. Search Engine (Interface)	3
	IV. Delivery	5
	V. Cost Estimate	6
	VI. Linking & MARC Records	7
	VII. Support for Contract	8
	VIII. Proposed System Performance	9
	IX. Statistics Report	10
	X. Training & Branding	11
	XI. Licensing	12
	XXI. ADA Compliance	13
XIII. Statewide Trial & Demonstrations	14	

Primary Evaluation Elements Include:	Secondary Evaluation Elements	Secondary Evaluation Elements, continued
<ul style="list-style-type: none"> <li>• Content: Genealogy, census or historic maps</li> <li>• Search Engine (Interface)</li> <li>• Delivery</li> <li>• Cost Estimate for Statewide Subscription for TexShare Members</li> </ul>	<ul style="list-style-type: none"> <li>• Linking &amp; MARC Records</li> <li>• Support for Contract</li> <li>• Proposed System Performance</li> <li>• Statistics Reports</li> <li>• Training</li> <li>• Branding</li> </ul>	<ul style="list-style-type: none"> <li>• Licensing</li> <li>• ADA</li> <li>• Statewide Trial</li> <li>• Demonstration</li> </ul>

**Package 3**  
**Request for Offer Response Form**  
**Texas State Library and Archives Commission - TexShare Database Program**

Attachment B

**II. CONTENT**

Below is a list of the information TSLAC is requiring for each database title. Please list the information on each database title in the order listed below.

If you offer different packages at various levels (such as basic or comprehensive) please include information for each of the levels.

**PROQUEST RESPONSE**

In response to the RFP, we're pleased to offer renewal of subscription access to HeritageQuest Online. We've also been asked to provide information about how HeritageQuest Online complements Texas Digital Sanborn Fire Insurance Maps (originally offered to TexShare in a bundle with HeritageQuest Online). TexShare has purchased permanent access to Sanborn Maps, which is why pricing is neither included in nor relevant to our offer.

**HeritageQuest Online** is a comprehensive treasury of American genealogical resources — rich in primary sources, including the US Federal Census, local and family histories, city directories, and more. **Texas Digital Sanborn Fire Insurance Maps** provide detailed property and land-use records that depict the grid of everyday life in Texas towns and cities from 1867 to 1970. By combining these two popular resources, genealogists can pinpoint individual buildings, properties and urban neighborhoods where their ancestors resided, worked, shopped, attended school and church, and were buried.

**Package 3**  
**Request for Offer Response Form**  
**Texas State Library and Archives Commission - TexShare Database Program**

Attachment B

Please attach a complete title list, including dates covered for each title and dates of full text for each title.

1. Database Title
2. # of Titles
3. # of Titles full text cover-to-cover
4. # of titles with graphics (maps, photos, charts, etc..) included
5. Dates covered<sup>1</sup>
6. Document Type<sup>2</sup>
7. Update schedule
8. Enhanced access points<sup>3</sup>
9. Citation Formats<sup>4</sup>

**PROQUEST RESPONSE**

A title list collecting this information isn't applicable to the genealogical information found in HeritageQuest Online.

- Are electronic reserves and electronic course pack rights included for all content? Answer Yes ✓ or No.
- If no, what % of content is not included?

<sup>1</sup> Indicate dates of coverage in the format MM/YY-MM/YY or MM/YY-present. Also indicate "R" for rolling back file or "C" for comprehensive back file

<sup>2</sup> Indicate one or more of the following document types: journal, pamphlet, booklet, book chapter, book, census record, photograph, map

<sup>3</sup> RSS feeds, Mobile Devices, Social Media, Widgets & other evolving user tools

<sup>4</sup> Indicate citation formats available such as MLA or APA for use when citing articles from database



Request for Offer Response Form

**Texas State Library and Archives Commission - TexShare Database Program THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.**

**III. SEARCH ENGINE (INTERFACE)**

**PROQUEST RESPONSE**

To some extent, the specifications in the following table aren't applicable to HeritageQuest Online, which includes a number of disparate collections. We've listed available search methodologies for each of them following.

- **Census.** Search for people with Basic or Advanced search; browse images. Basic search includes searching by surname, given name, census year and state. Advanced search includes the basic search plus county, township, age, gender, race and birthplace, depending upon availability for the census year.
- **Books.** Keyword search by people, places, publications; browse publications.
- **PERSI.** Search for article citations about people, places, and research methodologies. Search for periodical titles.
- **Freedman's Bank.** Search for people by surname, given name, application year, and bank location. Browse images.
- **Revolutionary War Pensions.** Search for people by surname, given name, state, branch of service.
- **Serial Set.** Search person name, place name, keyword, date range.

Options available to user:	NA	YES	NO
cut and paste documents into word processor, etc		X	
Limit searches by journal title	X		
Limit by full text or image availability	X		
Limit searches by document type		X	
limit searches by date ranges		X	
use Boolean logic		X (books only)	
use wild card symbols and truncation		X (books only)	
use an online thesaurus	X		
use levels of searching (novice/expert)		X	
set number of results listed		X	
sort results list by relevancy		X (books only)	
Sort results by date		X	
Search across databases	X		
Provide search history		X	
Search screen customizable			X
Results screen customizable			X
Features (such as default search type) can be set at the institutional level			X
Search by keyword		X	
search by publication		X (books only)	
Search using browse		X	
Controlled subject vocabulary	X		
Search using phrases		X	
Proximity searching		X (books only)	
Search using natural Language	X		

Request for Offer Response Form

**Texas State Library and Archives Commission - TexShare Database Program THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.**

**III. SEARCH ENGINE (INTERFACE)**

Options available to user:	NA	YES	NO
Spell Checking	X		
Alternate spellings suggested for misspelled search terms	X		
Ability to link directly to the individual database using Open URL			X
Context-sensitive help messages		X	
Capability to customize database homepage			X
Ability to provide usability tools such as widgets, social networking interactivity, and other relevant apps. For use in TexShare and with remote sites			X

- In which discovery services is the content made available:

- EBSCO Discover Service                      Yes \_\_\_\_\_                      No   x
- WorldCat Local                                      Yes \_\_\_\_\_                      No   x
- Serial Solutions Summon                      Yes \_\_\_\_\_                      No   x
- Primo Central (ExLibris)                      Yes \_\_\_\_\_                      No   x
- Encore Discover (Innovative Interfaces)                      Yes \_\_\_\_\_                      No   x
- Other    Yes \_\_\_\_\_                      No   x

**Authentication**

**Are you able to authenticate using these three (3) methods?**

- IP-authentication                                      Yes   x                                        No \_\_\_\_\_
- Username/password authentication                      Yes \_\_\_\_\_                                      No   x
- URL with embedded username/password                      Yes   x                                        No \_\_\_\_\_

**PROQUEST RESPONSE**

HeritageQuest Online also offers referring URL authentication.

Request for Offer Response Form

Texas State Library and Archives Commission - TexShare Database Program

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.**

**IV. DELIVERY**

- Which of the following Texas entities would be provided access through the TexShare program under this proposal response?  
(In order to be considered for the core database program, answers to A, B, C, F, G, and H must be “yes.” If a Respondent answers “no” to any of these elements, the Respondent can still be considered as a TexSelect product.)

**A. TexShare Members**

- |   |                     |
|---|---------------------|
| <b>A. Academic institutions</b>   | Yes <u>  x  </u> No |
| <b>B. Public Libraries</b>  | Yes <u>  x  </u> No |
| <b>C. Public/school library combinations</b>                            | Yes <u>  x  </u> No |
| D. State governmental agency libraries                                  | Yes <u>  x  </u> No |
| E. Libraries of Clinical Medicine                                       | Yes <u>  x  </u> No |
| <b>F. Authorized remote users of academic institutions</b>              | Yes <u>  x  </u> No |
| <b>G. Authorized remote users of public libraries</b>                   | Yes <u>  x  </u> No |
| <b>H. Authorized remote users of public/school library combinations</b> | Yes <u>  x  </u> No |
| I. Authorized remote users of state governmental agency libraries       | Yes <u>  x  </u> No |
| J. Authorized remote users of Libraries of Clinical Medicine            | Yes <u>  x  </u> No |

- Respondent can ensure a complete set up (including IP-based access, password-based access, and referring-URL access, as appropriate) of all member libraries would be complete by a subscription start date of October 1, 2013, provided Respondent was selected and awarded a contract by August 1, 2013.  
Yes   x   No \_\_\_\_\_



**Package 3**  
**Request for Offer Response Form**  
**Texas State Library and Archives Commission - TexShare Database Program**

**V. COST ESTIMATE FOR STATEWIDE SUBSCRIPTION FOR TEXSHARE MEMBERS**

<b>TexShare Member Pricing</b>
Pricing should be specified for the initial year. A not-to-exceed percent increase should be provided for each subsequent year. If offering multiple databases, show individual pricing as well as “package” pricing. The TSLAC may negotiate best and final offer.
<ol style="list-style-type: none"> <li>1. Database Name</li> <li>2. Price Quote</li> <li>3. Specify any restrictions on simultaneous use</li> </ol>
<p><b>PROQUEST RESPONSE</b></p> <p>We offer HeritageQuest Online with continued unlimited simultaneous usage.</p>
<ul style="list-style-type: none"> <li>• In the event that the number of full text periodical titles drops significantly in any one year; how would Respondent compensate the consortium if a contract were awarded?</li> </ul>
<p><b>PROQUEST RESPONSE</b></p> <p>HeritageQuest Online contains very few periodicals, so this isn't applicable (as it would be to a traditional aggregated periodicals collection). However, as with all of our databases, we are committed to working with all of our customers to make adjustments in the event of a significant reduction in content.</p>
<ul style="list-style-type: none"> <li>• Does license accommodate pro rata refunds for current subscribers? Yes or No</li> </ul>
<p><b>PROQUEST RESPONSE</b></p> <p>This is inapplicable to our offer to renew statewide services.</p>

**Individual Database Pricing Module**

<b>Database Name</b>	<b>10/1/13-9/30/14</b>	<b>10/1/14-9/30/15</b>	<b>10/1/15-9/30/16</b>	<b>10/1/16-9/30/17</b>	<b>10/1/17-9/30/18</b>
HeritageQuest Online	\$321,934	Increase not to exceed 3%	Increase not to exceed 3%	Increase not to exceed 4%	Increase not to exceed 5%

**Package Database Pricing**

<b>Database Name</b>	<b>10/1/13-9/30/14</b>	<b>10/1/14-9/30/15</b>	<b>10/1/15-9/30/16</b>	<b>10/1/16-9/30/17</b>	<b>10/1/17-9/30/18</b>
N/A					



Request for Offer Response Form

Texas State Library and Archives Commission - TexShare Database Program

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**VI. LINKING AND MARC RECORDS**

Please answer the following questions on each subject.

<b>A. To Digital Content and Library Holdings</b>	<b>B. MARC Records</b>
<ul style="list-style-type: none"> <li>• Is search engine Open URL Compliant? Yes or No ✓</li> <li>• If yes, describe the steps required to implement linking mechanism.</li> </ul>	<ul style="list-style-type: none"> <li>• Can libraries download MARC records for titles into their library online catalog? Yes or No ✓</li> </ul> <p><b>PROQUEST RESPONSE</b> This is largely inapplicable to HeritageQuest Online, as MARC records are not available for the majority of its content.</p>



Request for Offer Response Form

Texas State Library and Archives Commission - TexShare Database Program

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**VII. SUPPORT FOR CONTRACT**

<p><b>A.</b> Please provide the following information on the primary contacts for service problems.</p>	<p><b>B.</b> Provide information on three (3) statewide database contracts held by Respondent in states other than Texas.</p>
<ol style="list-style-type: none"> <li>1. Name</li> <li>2. Title</li> <li>3. Telephone Number</li> <li>4. Email address</li> <li>5. % of time devoted to Texas usage</li> </ol> <p><b>PROQUEST RESPONSE</b> For the best support experience, we recommend you continue to contact our support center (phone 800.889.3358, e-mail Email.TechnicalSupport@proquest.com, web form <a href="http://www.proquest.com/en-US/support/contact.shtml">http://www.proquest.com/en-US/support/contact.shtml</a>). Your primary contact is Frank Monaco, Technical Support Supervisor, 800.889.3358 x72386, frank.monaco@proquest.com. The percentage of time devoted by our technical support staff to Texas usage depends on the volume of calls received from within Texas and elsewhere.</p>	<ol style="list-style-type: none"> <li>1. Consortium name</li> <li>2. State</li> <li>3. Reference contact at consortium</li> <li>4. Reference contact's telephone number</li> <li>5. Reference contact's email address</li> </ol> <p><b>PROQUEST RESPONSE</b> 1. Michigan Electronic Library (MeL) 2. Michigan 3. Deb Biggs-Thomas 4. 517.373.4466 5. biggsthomasd@michigan.gov</p> <ol style="list-style-type: none"> <li>1. VIVA</li> <li>2. Virginia</li> <li>3. Katherine A. Perry</li> <li>4. 703.993.4654</li> <li>5. kperry@gmu.edu</li> </ol>
<ul style="list-style-type: none"> <li>• Confirm if technical support staff would be available to support TSLAC Staff, Staff at individual libraries, and remote users.</li> </ul> <p><b>PROQUEST RESPONSE</b> Technical support staff are available to support TSLAC staff and staff at individual libraries.</p>	<ol style="list-style-type: none"> <li>1. Iowa Educators Consortium</li> <li>2. Iowa</li> <li>3. Jerry Cochrane</li> <li>4. 319.399.6741</li> <li>5. jcochrane@gwaea.org</li> </ol>

Request for Offer Response Form

Texas State Library and Archives Commission - TexShare Database Program

***THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.***

- What are the hours that live technical support would be available?

**PROQUEST RESPONSE**

Live technical support staff is available 7:00 a.m. to 3:00 a.m. (all times are Central Time) Sunday through Thursday and 7:00 a.m. to 11:00 p.m. Friday and Saturday.

## Request for Offer Response Form

## Texas State Library and Archives Commission - TexShare Database Program

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.**

**VIII. PROPOSED SYSTEM PERFORMANCE**

A. Describe your contingency/back-up plans in case of server failure.

**PROQUEST RESPONSE**

We have designed our systems for maximum availability and with significant redundancy to eliminate any impact on customers from hardware failures. The systems are designed with sufficient reserve capacity to handle all spikes in demand with no degradation in response time. Currently, the system is designed and set for a potential **12,000** simultaneous users.

Following, we have provided specifics about various subsystem technical aspects.

**Web (provide application services to end users):**

- Fronted with Web Application Accelerator around the world
- Load balanced behind a redundant pair of Local Traffic Manager
- Total server farm (OS: Linux): 40 servers (WebApp)

**Search and Document Retrieval (provide search and serve ASCII content to end users):**

- Redundant application and server architecture.
- Total server farm (OS: Linux): 312 servers (QR + SEARCH)

**Services (provide email, alerting, RSS, linking, OpenURL, author resolver, reference linking, My Research, QuikBib, IDL, thesaurus and other miscellaneous services to end users):**

- Redundant application server architecture
- Total server farm (OS: Linux): 18 servers (SERVICE + FAST MISC + CSAMEDIA + IDL)

**Multimedia and Image Services (serve video/audio/multimedia and image/PDF content to end users via services):**

- Redundant application, server and storage architecture.
- Total server farm (OS: Linux): 21 (FEL PQ/HNP + APACHE IRS)

**Smart Search (provide smart search services to end users):**

- Redundant application and server architecture.
- Total server farm(OS: Linux): 12 servers (SMA\_ONLINE + SMA\_NYT)

**Oracle Database (authentication):**

- Redundant server architecture. Enterprise architecture used employing Oracle RAC cluster technology.
- Total server farm(OS: Linux): 5 servers

Company Name: ProQuest

Contact Name: Craig Burin

Date: April 5, 2013

## Request for Offer Response Form

## Texas State Library and Archives Commission - TexShare Database Program

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.****Scalability, Uptime and Backup:**

- Each subsystem is highly scalable.
- Capacity can be quickly added in units to virtually every subsystem without requiring downtime or impacting end users.
- All subsystems are monitored 24x7 to ensure that ProQuest delivers goal response times.
- Replacement hardware is maintained on-site for all Linux systems (HP blade).
- Any needed replacement hardware requires less than 2 hours for installation; due to the redundant nature of the system design, and the fact that the system automatically takes failed hosts out of service, end users see no disruption of service during hardware replacement.
- We host ProQuest managed IT equipment with a highly redundant primary facility at an industry leading Tier III facility in Washington DC, USA and a cold standby facility in Ann Arbor, Michigan, USA. We replicate all of our live production data from the production facility to the standby facility continuously.

B. Describe the redundancy or fail-over plans proposed to provide services to TexShare libraries in the event of primary service outage.

**PROQUEST RESPONSE**

In addition to the information provided in our response to the previous specification, we employ two primary gigabit Ethernet lines and one shadow gigabit Ethernet line with diverse fiber paths to two carriers for Internet connectivity. Additionally, we constantly monitor bandwidth, upgrading our outbound links to higher speed lines as necessary. We can increase when and if necessary to two gigabits of outbound bandwidth, and have subscribed to a commit rate of 600 megabits based on twice our actual peak usage.

Employing these diverse paths allows us to prevent service interruption due to failure along a single path. In addition, our service providers have diverse fiber paths over OC-48 and OC-192 SONET rings (with connections at four central offices to protect against a central office outage), and have diverse entry points from the SONET ring into the facility.

C. Respondent can provide 98% availability based upon 24/7 x 365. Yes   x   No       

D. Proposed system operates so that 95% of the responses to a simply inquiry (author's name or title words) would be completed in five seconds. System response time is defined as the time from which the Respondent's computer receives a signal to the time a complete response is generated by the Respondent's computer. Yes   x   No       

**PROQUEST RESPONSE**

HeritageQuest Online consistently produces the following results.

- Search results return in an average of 2 seconds or less.
- ASCII full text documents return in an average of 1 second or less.

Company Name: ProQuest

Contact Name: Craig Burin

Date: April 5, 2013

**Package 3**

**Request for Offer Response Form**

Attachment B

**Texas State Library and Archives Commission - TexShare Database Program**

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.**

Please note that these results reflect time necessary for *the completion of server functions* and *the beginning of data transmission to the user*. Data transmission speed is a function of the end user's network connection. Our systems will drive the communication link at the link's maximum capability.

Company Name: ProQuest  
Contact Name: Craig Burin  
Date: April 5, 2013



## Package 3

## Request for Offer Response Form

## Texas State Library and Archives Commission - TexShare Database Program

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.****IX. STATISTICS REPORTS**

<b>If library's access method allows, statistics on the proposed service would be:</b>	<b>YES</b>	<b>NO</b>
Accessible to the state (consortia) administrator	X	
Accessible to campus or branch library staff	X	
Accessible over the Internet	X	
Accessible 24 hours a day, 7 days a week	X	
Statistical report capable of producing a report for a specific amount of time (i.e. a 6 week period)	X	
<b>PROQUEST RESPONSE</b> You can produce a report including hourly statistics for up to 14 days, or the default time period, monthly.		
Statistical report capable of being downloaded into a local database or spreadsheet	X	
Delineated by the state of Texas	X	
Delineated by type of library (academic, public, library of clinical medicine)	X	
Delineated by campus or branch	X	
Delineated by library within campus	X	
Can Z39.50 or other federated searches be tracked separately from native interface search statistics?		
<b>PROQUEST RESPONSE</b> This is inapplicable to HeritageQuest Online, which can't accept Z39.50 or other federated searches at this time.		

<b>Usage Statistics Data Elements:</b> <i>(as appropriate to the database or terms of license)</i>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
Indicate whether the below data elements are available in your product's statistical reports.			
<b>Non-Periodical Databases:</b>			
Number of Sessions	X		
Number of Searches (Queries)	X		
Once annually, at a time specified by TexShare consortial administrators, provide:			
Number of periodical titles indexed			X
Number of periodical titles with full-text			X
Document Usage (e.g. "documents," "page hits," "page views," or similar measures.	X		

A. What is the frequency with which proposed statistics would be updated?

Daily x Weekly \_\_\_\_\_ Monthly \_\_\_\_\_

**IX. STATISTICS REPORTS**

- B. By which means can consortial and library administrators retrieve statistics.  
Website:   
Automated email:

**PROQUEST RESPONSE**

The **Delivery Method** option lets you select how you would like to receive your report. The available methods are:

- **Display to screen as web page** (within 90 seconds).
- **Download now**. The report can be downloaded immediately.
- **E-mail report now**. The report will arrive by e-mail within 24 hours.
- **Schedule report for periodic e-mail delivery**. The report will be delivered according to the delivery options you select.

- C. Is database COUNTER Release 4 compliant? Yes \_\_\_\_\_ No

**PROQUEST RESPONSE**

We've created a modified COUNTER report for HeritageQuest Online. Genealogical content (for example, census records) doesn't contain traditional bibliographic information.

## Request for Offer Response Form

## Texas State Library and Archives Commission - TexShare Database Program

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.**

**X. TRAINING AND BRANDING**

*Please answer the following questions on Training & Branding.*

**Training**

- Would Respondent include onsite-training sessions at locations in Texas as part of the proposed price quote? Yes or No.  
Yes x No \_\_\_\_\_
- Describe the proposed training, including number of onsite and any on line training sessions at locations in Texas that would be available to TexShare Member libraries as included in the price quote.

Our Customer Education and Training department's primary focus is to conduct post-sales training for customers. Our goals are to facilitate successful searching, encourage usage, and maximize the library's investment in our products. Our employees do all training (we don't use contractors) and is free of charge.

**Training Delivery**

We can perform training in person or from a distance. We offer training at your location, online via web conferencing, or online as part of our regular webinar series.

**At Your Location**

We hold onsite sessions at your location, and can customize them according to your wishes and the databases in your subscription. We can customize sessions for end users or librarians, or as train-the-trainer sessions. Presentations are demonstration-style, but offer the option of hands-on practice time (provided that necessary equipment and facilities are available at your site).

Onsite training is the most interactive mode of delivery we offer. Sessions vary in length, but last a minimum of sixty minutes. We are responsible for preparation of training materials and for travel and accommodation costs for our staff. You're responsible for inviting and organizing the trainees, reserving the training room, and ensuring equipment is available. We don't limit the number of attendees, although class sizes of over 25 makes inclusion of effective hands-on training time difficult.

Company Name: ProQuest

Contact Name: Craig Burin

Date: April 5, 2013

**Request for Offer Response Form****Texas State Library and Archives Commission - TexShare Database Program****THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.****Online via Web Conferencing**

We offer online sessions are offered via web conferencing software. These sessions can also be customized according to your wishes and the databases in your subscription. We give participants ample opportunity to ask questions, with online chat or a toll-free conference call line. Online sessions rarely exceed sixty minutes.

We can schedule these sessions by request on an as-needed basis, or set up a program with a dedicated web page that lists, for example, a monthly schedule of sessions and access information. You can then share the web page within your organization. This is a convenient and effective way to deliver training whether for two or 200 attendees. When large numbers of participants are expected, we supply at least one additional trainer to help manage questions from the audience. We don't limit the number of attendees or the number of online sessions we offer; a precise number or range for online sessions can be agreed upon during negotiations.

**Public Webinar**

Online, public webinars are presentations to multiple organizations and are not customized for any one institution. These webinars provide an excellent means of covering everything from an introductory overview to focused information about new or updated products and features. As with customized sessions, participants can easily interact with the trainer and have their questions addressed. Webinars usually last from 30 to 60 minutes; many are conducted in languages other than English.

We offer an extensive schedule of upcoming public sessions, posted at [www.proquest.com/go/webinars](http://www.proquest.com/go/webinars), and including training in genealogy for databases such as HeritageQuest Online. Users can search for a specific course, examine a calendar of upcoming sessions, and easily access previously recorded webinars for instant viewing. Simple point-and-click registration for any webinar is always available.

**Training Different Audiences**

Depending on the target audience, we offer three basic types of training, all of which can be delivered by any of the means described above. Our trainers work with your librarians to establish what type of training is desired and to schedule the sessions. Our training program is designed to be flexible and customizable to best serve the needs and expertise of each unique audience.

**Train-the-Trainer**

We most commonly offer train-the-trainer sessions when the majority of the attendees are librarians (or, in K-12 schools, school teachers). We design sessions to impart necessary information and techniques to librarians and teachers responsible for sharing product knowledge with their colleagues and end users. That's why we focus on best practices, search examples and areas that we know may be less intuitive.

## Request for Offer Response Form

## Texas State Library and Archives Commission - TexShare Database Program

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.****Administrative Training**

We design administrative training exclusively for librarians whose responsibilities include implementation. Sessions include information about linking setup, modifying default interface settings, running usage reports and making use of other customization features.

**End User/Patron Training**

We offer end user (or student) and faculty/patron training when there is a more general audience. For these sessions, we adjust training pitch, search examples and use of library terminology accordingly.

**The Training Team**

We believe in tried-and-true techniques to facilitate education, and to foster the use of new technologies and the adoption of new ideas about how adults learn. Our teams around the globe deliver effective and engaging training on platforms, tools and content to all types of librarians and their users.

Our trainers have more than just casual library experience—the team consists of former librarians, recent MLIS graduates, publishing industry representatives, and former high school teachers. Most have a Master’s degree in Library and/or Information Science. Team members are dispersed geographically; most are cross-trained in multiple or all of our products, and the dedicated group of K-12 trainers are all P21 certified (see **The Partnership for 21<sup>st</sup> Century Skills** at [www.p21.org](http://www.p21.org)). All are full time ProQuest employees.

Trainers perform other functions that reflect their in-depth knowledge of our products and systems: testing new content and features before general release; providing search assistance; preparing training materials such as quick reference cards, database guides and LibGuides, sample exercises and tutorials, including YouTube videos. The team is also instrumental in developing and participating in the ProQuest Graduate Education Program ([www.proquest.com/go/gep](http://www.proquest.com/go/gep)).

**Training Materials**

We maintain a wealth of information designed to help end users. They can find much of it through the Support & Training portion of our website ([www.proquest.com/en-US/support/training/materials.shtml](http://www.proquest.com/en-US/support/training/materials.shtml)). The page offers links to a number of resources.

**YouTube Screencasts**

We provide short, “how to...” video clips in various playlists on the ProQuest Training channel [youtube.com/proquesttraining](http://youtube.com/proquesttraining), including clips regarding HeritageQuest Online.

## Request for Offer Response Form

## Texas State Library and Archives Commission - TexShare Database Program

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.****LibGuides**

LibGuides provide a consistent and now familiar format for presenting database facts, search examples, tips and any other type of user information, all of which can be copied, edited, customized and reused for different types of libraries and their constituents. The [ProQuest LibGuides](#) home page enables browsing by subject group or just identifying what is featured, popular and recent. Not only is it easy to locate relevant LibGuides, but a librarian or frequent searcher can setup an e-mail alert for notification when a LibGuide is updated with new content or links to other pertinent materials such as the webinars and YouTube playlists.

**Pre-Recorded Webinars**

Previously recorded webinars (which can be paused, fast-forwarded and rewound) serve as instant tutorials available at any time. These are available under the heading “Event Recordings” at [www.proquest.com/go/webinars](http://www.proquest.com/go/webinars).

We provide pre-recorded training materials specifically for K-12 at [www.proquestk12.com/trainingsupport.shtml](http://www.proquestk12.com/trainingsupport.shtml). Each pre-recorded program is a full training class that covers database content and search features. The programs were developed to be used by an individual end user, or to be shared with a group in a training or meeting environment. Pre-recorded training modules (that can be downloaded and viewed on an MP3 compatible player) are also available by free podcast subscription.

**Commitment to TexShare**

For TexShare, we propose ten days of onsite training, with a maximum of three sessions per day (depending on the location). We provide this training at no additional cost with your subscription. In place of onsite training, we can provide customized online training—up to 40 sessions—or a combination of onsite and online (where 1 day onsite = 4 online sessions).

**Branding**

- Does respondent support branding? No \_\_\_\_\_ One brand  Two brands \_\_\_\_\_ More than two brands \_\_\_\_\_

## Request for Offer Response Form

## Texas State Library and Archives Commission - TexShare Database Program

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.**

**XI. LICENSING**

*Attach a copy of Respondent's standard licensing agreement. The Texas State Library and Archives Commission may negotiate contract terms with successful Respondents once preferred products are determined.*

- A. If participating TexShare libraries are already subscribing to a Respondent's proposed product that is selected for the TexShare program, would Respondent provide those libraries compensation for the remaining balance of their contracts?  
Yes\_\_\_\_\_ No\_\_\_\_\_

**PROQUEST RESPONSE**

This doesn't apply to our proposal. There are no TexShare participating libraries independently subscribing to HeritageQuest Online.

- B. If a library or institution included in a subsequent agreement with Respondent is currently subscribing to all or a portion of Respondent's proposed data resources, describe the method through which those customers would receive compensation for the remaining balance of their contracts.

**PROQUEST RESPONSE**

This doesn't apply to our proposal. There are no TexShare participating libraries independently subscribing to HeritageQuest Online.

- C. If additional Texas public, academic, state governmental agency libraries or libraries of clinical medicine join the TexShare Database Program, Respondent would add them to any resulting subscription for no additional cost during the contract year.  
Yes x No\_\_\_

- D. Does Respondent's licensing agreement support the "fair use" rights of a participating library provided by statute in 17 U.S.C.  
Yes x No\_\_\_

Company Name: ProQuest

Contact Name: Craig Burin

Date: April 5, 2013



## Request for Offer Response Form

## Texas State Library and Archives Commission - TexShare Database Program

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED FOR AWARD.**

**XXI ADA COMPLIANCE**

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.

Each Respondent MUST answer the following questions AND complete a Voluntary Product Accessibility Template (VPAT)

1. Does database support ADA compliant browsers? Yes  No 
  - a. If no, does the database make any accommodations in its visual display for visually impaired users? Yes  No
2. Voluntary Product Accessibility Template (VPAT).

As Required by 1 TAC 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 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. 2) Respondent 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 substantially the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.
3. If database does not comply with any of the standards listed in the VPAT, please indicate a timeline for how and when you will be compliant.

**PROQUEST RESPONSE**

As a condition of the contract, ProQuest will ensure that HeritageQuest Online is ADA-compliant by March 31, 2014.

Company Name: ProQuest

Contact Name: Craig Burin

Date: April 5, 2013



**Package 3**  
**Request for Offer Response Form**  
**Texas State Library and Archives Commission - TexShare Database Program**  
**THIS FORM MUST BE COMPLETED AND SUBMITTED TO BE CONSIDERED**  
**FOR AWARD.**

**XIII. STATEWIDE TRIAL AND DEMONSTRATION**

**Statewide trial**

All Respondents are required to provide a statewide trial of the offered database products during the time listed in Package 2, Section 3.1.

- A. Respondent will set up a statewide trial to begin during the date and time listed in Package 2, Section 3.1.
- B. Provide URL with embedded credentials (login and passwords) where trials will be available to all TexShare Members. TSLAC will make the trial available to its constituent libraries, as appropriate, through password-protected web pages.
- C. Provide the following information on the Respondent's contact person for setting up a proposed statewide trial:
  - Name
  - Title
  - Telephone #
  - Fax #
  - Email

**PROQUEST RESPONSE**

Unfortunately, your current subscription to HeritageQuest Online precludes our offering trial access.

**Demonstration**

Respondents must provide a live demonstration.

Respondents must be able to provide a demonstration given a two-week notice. The date for the demonstrations is listed in Package 2, Section 3.1.

Demonstrations will not exceed 45 minutes; an additional 30 minutes will be given for questions and answers. If there are additional questions, TSLAC will email the vendor for answers.

**PROQUEST RESPONSE**

We'll be pleased to provide a live demonstration.



## **2.5 Subcontractors**

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Respondent. No subcontract under the Contract shall relieve the Respondent of responsibility for ensuring the requested services are provided. Respondents planning to subcontract all or a portion of the work to be performed must identify the proposed subcontractors.

TSLAC prefers to select a primary Vendor to be responsible for contract performance and payment, whether or not subcontractors are involved. If subcontractors will be used during the implementation of the project, Respondent shall provide documentation that the subcontractor meets the same minimum qualifications listed in Appendix C.

### **PROQUEST RESPONSE**

This is in applicable to our offer. We don't use subcontractors.





# HUB SUBCONTRACTING PLAN (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

**NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).**

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.13 are:

- 11.2 percent for heavy construction other than building contracts,
- 21.1 percent for all building construction, including general contractors and operative builders contracts,
- 32.7 percent for all special trade construction contracts,
- 23.6 percent for professional services contracts,
- 24.6 percent for all other services contracts, and
- 21 percent for commodities contracts.

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.14(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only contracts that have been in place for five years or less shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.

**SECTION 1** RESPONDENT AND REQUISITION INFORMATION

a. Respondent (Company) Name: \_\_\_\_\_ State of Texas VID #: \_\_\_\_\_  
 Point of Contact: \_\_\_\_\_ Phone #: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ Fax #: \_\_\_\_\_

b. Is your company a State of Texas certified HUB?  - Yes  - No

c. Requisition #: \_\_\_\_\_ Bid Open Date: \_\_\_\_\_  
(mm/dd/yyyy)

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

## SECTION 2 SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, including goods and services, will be subcontracted. Note: In accordance with 34 TAC §20.11., an "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- **Yes**, I will be subcontracting portions of the contract. (If **Yes**, complete Item b, of this SECTION and continue to Item c of this SECTION.)
- **No**, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources. (If **No**, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for five (5) years or less.	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for more than five (5) years.	Percentage of the contract expected to be subcontracted to non-HUBs .
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <http://window.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>)

c. Check the appropriate box (Yes or No) that indicates whether you will be using only Texas certified HUBs to perform all of the subcontracting opportunities you listed in SECTION 2, Item b.

- **Yes** (If **Yes**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the **aggregate expected percentage** of the contract you will subcontract with Texas certified HUBs with which you have a continuous contract\* in place with for five (5) years or less meets or exceeds the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements".

- **Yes** (If **Yes**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed.)
- **No** (If **No**, continue to SECTION 4 **and** complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed.)

*\*Continuous Contract: Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.*



Enter your company's name here: \_\_\_\_\_

Requisition #: \_\_\_\_\_

**SECTION 3 SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.)**

Check the appropriate box (Yes or No) that indicates whether your response/proposal contains an explanation demonstrating how your company will fulfill the entire contract with its own resources.

- Yes (If *Yes*, in the space provided below **list the specific page(s)/section(s)** of your proposal which explains how your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)
- No (If *No*, in the space provided below **explain how** your company will perform the entire contract with its own equipment, supplies, materials and/or employees.)

**SECTION 4 AFFIRMATION**

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <http://www.window.state.tx.us/procurement/prog/hub/hub-forms/progressassessmentrpt.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

  
 \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date  
 (mm/dd/yyyy)

- REMINDER:** ➤ If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

**Appendix F**  
**Terms and Conditions Issues**

List below, by section, all exceptions to the Terms and Conditions. You must include the basis of your exception and provide proposed alternative language.

<b>Section</b>	<b>Section Title</b>	<b>Exception</b>	<b>Proposed Language</b>
Appendix E	22. Default	Vendor takes exception to immediate termination upon notice and is entitled to a reasonable cure period.	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 material terms and conditions of the Contract, the TSLAC may provide written notice providing reasonable particulars of the details of the alleged default to the Vendor, and the Vendor shall have 30 days from its receipt of such notice to cure the default, failing which TSLAC may then 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.
Appendix E	29. Property Rights	Vendor takes exception to any interpretation of Sections 29 or 41 that would transfer ownership, title, or intellectual property rights in Vendor's content, materials or services to TSLAC or any member institution. Vendor is not developing, producing or generating ANY work in connection with the services provided under the contract; all such content, materials and services are pre-existing, and Vendor is merely granting TSLAC a license to use the same for the duration of the license term.	Notwithstanding anything to the contrary in this section [29/41], Vendor retains all ownership, title, and intellectual property rights in Vendor's content, materials and services provided under this contract, all of which were in existence prior to the commencement of this contract and none of which were developed specifically for TSLAC.

Appendix E	41. Convenience of the State of Texas 54. Convenience of the State of Texas	Vendor takes exception to termination for convenience. Vendor's services are offered on an annual subscription basis, and early termination by the State should not result in refunds of subscription fees.	Notwithstanding anything to the contrary in this section [41/54], upon any such early termination initiated by the State (unless due to Vendor's uncured Default under Section 21 or resulting from non-appropriation of funds under Section 3), the Vendor shall not be required to refund any portion of TSLAC's annual subscription fees.
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Electronic Product License Agreement consists of:  
 ProQuest Customer Order Form US11042011  
 Terms and conditions of Electronic Products and License Agreement  
 PAL, Alumni Access, GIS, eBrary, Summon, 360 Addenda (if applicable)  
 Additional Site/Member Library (Additional form if applicable)

Subscribing Institution: _____  <b>Authorization by Customer (Licensee):</b>  _____ <div style="text-align: center; color: red; font-weight: bold;">Duly Authorized Confirmation</div> Name: _____ Title: _____ Date: _____	<b>Authorization by ProQuest LLC (Licensor):</b>   Signature: _____ <div style="text-align: center; color: red; font-weight: bold;">Duly Authorized Signature</div> Name: _____ Title: _____ Date Signed: _____
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By agreeing to this Electronic Products License Agreement and any Addenda attached hereto with your signature above, you are signing your agreement to ProQuest licensing you the product(s) listed below at the stated price(s) for the given period(s) under these terms and conditions and you certify that you are authorized to enter into this Agreement on behalf of the Subscribing Institution.

### ProQuest LLC Terms and Conditions

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You, the Institution listed above, agree that you and your Authorized Users are bound as follows:

1. **License Grant.** Subject to the terms of this Agreement, ProQuest LLC ("ProQuest") hereby grants you a non-exclusive, non-transferable license to access and use the products listed on your approved Order Form, invoice or purchase order (the "Products") solely at your principal location and those locations listed on the Additional Sites/Member Libraries Schedule. Any remote access rights and/or limits on simultaneous users are specified on the Order Form. Except as expressly set forth in this Agreement, you do not acquire any intellectual property rights in the Products or any associated software, systems, documentation or other materials. All such rights and interests remain in ProQuest and its licensors.
2. **Authorized Users.** By "Authorized User" we mean only: (1) For public libraries: library staff, individual residents of your reasonably defined geographic area served and walk-in patrons while they are on-site; (2) For schools and other academic institutions: currently enrolled students, faculty, staff, visiting scholars and walk-in patrons while they are on-site; and (3) For other types of organizations: your employees, independent contractors and other temporary workers while they are performing duties within the scope of their employment or assignment.
3. **Remote Access.** If your subscription allows you to provide remote access to a Product, you will strictly limit such access to Authorized Users through the use of passwords, IP addresses or other secure method of user verification. You will not share access with other schools, libraries, institutions or third parties either directly or indirectly, unless such school, library, institution, or third party is listed on the Additional Sites/Member Libraries Schedule. You will immediately notify us if you believe your security has been compromised.
4. **No redistribution.** ProQuest endorses the Interlibrary Loan and Scholarly Sharing provisions below. Beyond these uses, you may not redistribute any material retrieved from the Products nor allow any use that will infringe the copyright or other proprietary right of ProQuest or its licensors. You may not use the Products to create products or perform services which compete or interfere with those of ProQuest or its licensors.

5. **Permitted Uses.** The Products may be used for your internal research or educational purposes, as follows:
- a. **Research and Analysis.** You and your Authorized Users are permitted to display and use information contained in the Products for educational, scientific, or research purposes, including illustration, explanation, example, comment, criticism, teaching, research or analysis, provided that in doing so you or your Authorized Users do not violate an express provision of this Agreement.
  - b. **Digital and Print copies.** You and your Authorized Users may download or create printouts of a reasonable portion of the articles or other works contained in the Products so long as each work is retrieved directly from the on-line database system in a manner that causes a "hit" to be registered on the on-line system for each and every print or digital copy. All reproduction and distribution of such printouts, and all downloading and electronic storage of materials retrieved through the Products shall be for your own internal or personal use as allowed under the doctrines of "fair use" and "fair dealing". Downloading of all or parts of a Product in a systematic or regular manner or so as to create a collection of materials comprising all or a material subset of a Product is strictly prohibited whether such collection is in electronic or print form.
  - c. **Electronic Reserves.** Articles or other works contained in a Product may be included in your electronic reserves systems so long as such use employs durable links to the Products so that a "hit" is registered on ProQuest's on-line platform each time a student views the work on reserve.
  - d. **Fair Use/Fair Dealing.** Nothing in this agreement restricts your use of the materials contained within the Products under the doctrines of "fair use" or "fair dealing" as defined under the laws of the United States or England, respectively.
  - e. **Interlibrary Loan (ILL).** Interlibrary Loan of materials retrieved from the Products is allowed provided that the loan is not done in a manner or magnitude that would replace the recipient library's own subscription to either the Products or the purchase of the underlying Work (e.g., newspaper, magazine or book), and that you comply with any special terms imposed by specific content providers or licensors as required under Section 6(c). With respect to our ProQuest® Dissertations & Theses product and other electronic archives such as Early English Books Online, Interlibrary Loan is restricted to one *printed* copy of the specifically requested dissertation, book or pamphlet loaned out at any one time.
  - f. **Scholarly Sharing.** You and your Authorized Users may provide to a third party colleague minimal, insubstantial amounts of materials retrieved from the Products for personal use or scholarly, educational or scientific 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 institution's own subscription to either the Products or the purchase of the underlying Work.
  - g. **MARC Records.** You may load ProQuest's MARC record Products into your Online Public Access Catalog (OPAC) containing your library holdings provided such records are not loaded into a shared online catalog system such as WorldCat without ProQuest's prior written consent.
  - h. **Scholar/Researcher Profiles.** The data contained within scholar profiles within our products are for use in facilitating research and collaboration amongst colleagues. Neither you nor your Authorized Users may export or otherwise exploit the scholar profiles for mass mailings or similar marketing purposes.
6. **Supplemental Terms.**
- a. **Updates.** ProQuest will announce any substantial additions, deletions or modifications of information, databases, materials, capabilities or services within the Products on its electronic mailing list service. These shall be subject to the terms and conditions of this Agreement at the time they are added to the Products, but shall not materially alter your use of the Products.
  - b. **Systems Usage.** To protect the Products for the research and educational use of Authorized Users, automated searches against ProQuest's systems are not permitted with the exception of nonburdensome federated search services. Data mining is prohibited.
  - c. **Content Provider Supplemental Terms.** Individual content licensors occasionally have conditions of use applicable solely to their content. Links to such content-specific conditions are clearly displayed with the associated content

and will not materially alter your use of the Products. With respect to third-party databases delivered through the Illumina platform, any supplemental terms and conditions are clearly hypertext linked on each search screen.

7. **Fees and Payments.** You agree pay the fees for the Products as shown on the order form, attached invoice, or accepted purchase order within thirty (30) days of your receipt of ProQuest's invoice. Firm U.S. Government orders require a valid purchase order and advance payment or payment in accordance with FAR 52.213.2.
8. **Term and Termination.**
  - a. **Term.** For subscription-based Products, the term of your rights and access shall continue from the Start Date until the Expiration Date as those are listed on the Order Form or an accepted purchase order for each such Product, plus any renewal term(s) agreed to. For CD-ROM,FTP databases, and other tangible media, you are granted a perpetual license to the most current version purchased, subject to the continued application of Acceptable Use Provisions of this Agreement (Section 1-6, above). This Agreement shall continue in force for so long as you are within the term of at least one ProQuest Product.
  - b. **Termination for Breach.** If a party breaches any material term of this Agreement and does not cure after 30 days written notice, the Agreement may immediately be terminated in whole or as to the affected Product. In the event the license granted under this agreement is terminated you shall disable all Products in your possession. This includes the destruction of any CD-ROMs, FTP databases or any software as well as any downloaded copies retrieved from the Products. In addition, ProQuest reserves the right to pursue any other legal remedy available to it.
  - c. **Remedial Action.** Without limiting the above, ProQuest may suspend delivery of Product(s) to you if it reasonably determines that your failure to comply with the Acceptable Use Provisions may cause irreparable harm to it or its licensors under the specific circumstances. If delivery is suspended, ProQuest will work with you in good faith to restore your access as soon as possible.
9. **Privacy.** The Products do not require the entering or capture of personally identifiable user information. ProQuest makes no representation as to whether any federal, state or local laws may regulate your administration of Authorized Users' access to the Products or require you to obtain consent from any Authorized User (or, in the case of minors, the parent or guardian of such user).
10. **Access and Use.**
  - a. ProQuest® CD-ROM Products may include software to be used in connection with the Products. It may not be reverse engineered or used for any other purpose.
  - b. You are responsible for local telecommunication connections if they are needed and any related third party charges.
  - c. ProQuest may seek to assist you from time to time regarding hardware and software compatibility with the Products, however PROQUEST SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR DETERMINING THE COMPATIBILITY OF ANY HARDWARE OR SOFTWARE NOT SUPPLIED BY PROQUEST WITH THE PRODUCTS AND PROVIDES NO WARRANTY WITH RESPECT TO THE OPERATION OF SUCH HARDWARE OR SOFTWARE WITH THE PRODUCTS.
11. **U.S. Government Restricted Rights.**  
The Products 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 (f/k/a ProQuest Information and Learning Company and/or Cambridge Scientific Abstracts LP and/or ProQuest-CSA 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 252.227-7202-3 (June 2005) Rights in Computer Software and Computer Software Documentation and/or subject to the restrictions of DFARS 252.227-7019 (June 1995) 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 (June 1987) Rights in Data-General, FAR 52-227-20(c)(2-3)) (March 1994) Rights in Data-SBIR Program and/or subject to the restricted rights provisions of FAR 52.227-15 (May 1999) Representation of Limited Rights Data and Restricted Computer Software and FAR 52.227-19 (June 1987) Commercial Computer

Software-Restricted Rights, as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurement.

12. **EEOC Statement.** ProQuest agrees to comply with all provisions of Executive Order 11246 of September 24, 1965, and all rules, regulations and relevant orders of the Secretary of Labor related to equality of employment opportunity which Executive Order, rules, regulations and orders are incorporated herein by reference.
13. **Limited Warranty and Disclaimer of Warranty.** ProQuest warrants that it has all rights necessary to enter into this Agreement and to provide the Products to you. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, THE PRODUCTS AND ALL EQUIPMENT AND SOFTWARE PROVIDED BY PROQUEST TO YOU ARE PROVIDED "AS IS" AND "AS AVAILABLE." THE WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, NEITHER PROQUEST NOR ANY PROVIDER OF INFORMATION OR SOFTWARE IN THE PRODUCTS WARRANTS THE USE OF THE PRODUCTS OR THAT THE SOFTWARE OR SYSTEMS WILL BE UNINTERRUPTED OR ERROR-FREE OR MAKES ANY WARRANTY AS TO THE AVAILABILITY OF THE PRODUCTS, THE ACCURACY, TIMELINESS, CORRECTNESS, RELIABILITY, CURRENCY OR COMPLETENESS OF THE INFORMATION OR THE RESULTS OF YOUR USE OF THE PRODUCTS, THE SOFTWARE OR THE INFORMATION, EVEN IF ASSISTED BY PROQUEST.
14. **Limitation of Liability.** THE MAXIMUM LIABILITY OF PROQUEST AND ITS LICENSORS ARISING OUT OF ANY CLAIM RELATED TO THE PRODUCTS WHETHER IN CONTRACT, TORT OR OTHERWISE SHALL BE LIMITED TO THE TOTAL AMOUNT OF FEES RECEIVED BY PROQUEST FROM YOU FOR THE PRODUCT AT ISSUE UP TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED. IN NO EVENT SHALL PROQUEST OR ITS LICENSORS BE LIABLE TO YOU FOR ANY LOST PROFITS, OR ANY OTHER INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES RELATED TO THE USE OF THE PRODUCTS OR PROQUEST'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF WHETHER PROQUEST OR ITS LICENSORS ARE DEEMED NEGLIGENT, EVEN IF IT IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
15. **Miscellaneous.**
  - a. **Assignment.** You may not assign this Agreement or any right granted hereunder without the prior written consent of ProQuest, which consent shall not unreasonably be withheld.
  - b. **Taxes.** Except to the extent that you are tax-exempt as to the tax in question, you are responsible for any sales, use, VAT, personal property or other local taxes (except those based on ProQuest's income) or import duties imposed on the Products.
  - c. **Waiver.** Failure to enforce any provision of this Agreement shall not be construed to be a waiver of such provision.
  - d. **Force Majeure.** Neither Party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to acts of God, Government Restrictions (including the denial or cancellation of any export or other necessary license), wars, acts of terrorism and/or any other cause beyond the reasonable control of the party whose performance is affected.
  - e. **Interruption of On-line Products.** Neither ProQuest nor its licensors shall be liable or deemed in default of this Agreement for any failure or delay or interruption in the on-line Products or any failure of any equipment or telecommunications resulting from any cause or circumstance beyond the reasonable control of ProQuest.
  - f. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes any and all previous and contemporaneous understandings or 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 your Purchase Orders, if any, are for your convenience and do not supersede any term or condition of this Agreement.

- g. **Severability**. If any provision of this Agreement is found invalid or unenforceable pursuant to a decree or decision of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable according to its terms.



**Texas State Library and Archives Commission**  
**RFO #: 306-14-8016**  
**Addendum #1**

1. May we submit databases that do not offer Z39.50 compliance without them being eliminated from consideration?
2. May we submit databases that do not offer OpenURL compliance without them being eliminated from consideration?
  - a. ANSWER for 1 & 2: YES, you may submit databases that do not offer Z39.50 or OpenURL Compliance.
3. In regards to ADA compliance, is the intent of this question to determine whether the offered resources can be search by an ADA compliant browser, or whether the resources themselves are ADA compliant?
  - a. ANSWER: This was a bad question, the resources themselves need to be ADA compliant at the time of signing a contract. Should we decide to contract with a vendor whose resources are not ADA compliant, a timeline for when the resources would become ADA compliant would need to be added into the contract.
4. A statement was made that because genealogy databases are reliant on images and images inherently cannot be accommodated by ADA requirements it would be impossible to be ADA compliant.
  - a. ANSWER: ADA compliance is ensuring that everyone, regardless of disabilities, has access to the same information. A couple of examples are to ensure that pictures have text tags that describe the pictures and that the databases can be searched via a keyboard and not just a mouse. The VPAT will provide TSLAC with the information needed to determine if the databases are ADA compliant and also give examples of what it is we will be looking for in our review.
5. May we submit databases that do not offer ADA compliance without them being eliminated from consideration?
  - a. ANSWER: The resources themselves must be ADA compliant at the time of signing a contract. If the resources are not compliant at the time of submitting an offer, please provide a timeline for when the resources would become compliant. This will be required should we decide to sign a contract and the resources are not currently ADA compliant.
6. If resources offered are unable to be used via remote access may we submit an offer without having it eliminated from consideration?
  - a. ANSWER: NO. Remote access for both academic and public libraries is fundamental to the core menu that comprises the TexShare resources offered to our member institutions. Remote access cannot be offered to just TexShare academic libraries, it must be offered to ALL TexShare libraries.  
HOWEVER, vendors may submit an offer for a particular resource as a TexSelect option and not a TexShare option.

Per Section 3.4 of Package 2, please sign this page and include with submitted Offer.



April 5, 2013

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DATE

**Texas State Library and Archives Commission**  
**Request for Offer #: 306-14-8016**  
**Question & Answers**  
**Addenda #2**

1. How many reps should attend the vendor demonstration? Please provide a minimum and maximum.

ANSWER: If invited for a demonstration, bring the people that will best represent your company and its product(s). There is no minimum or maximum.

2. Please expand upon the Texas State Library's definition of a subcontractor.

ANSWER: A subcontractor is a person or company paid to complete work that cannot be done by the contracted vendor. Examples could be training, marketing, or printing. TSLAC understands that the contracted vendor will have aggregated content from numerous publishers. The publishers are not considered subcontractors.

3. Approximately how many Texas State Library members will attend the demonstration session?

ANSWER: That has not been determined at this time. More information will be given to those invited to the demonstration.

4. For the purposes of the HUB Subcontracting Plan referenced in Sec 2.6 on p. 5 of 104710\_2.pdf, what types of work are considered to constitute subcontracting work under the contract? Does this refer only to the work of providing authentication and access to the electronic resources on offer, or is it intended to include the work of:
  - a. Updating or adding content
  - b. Maintaining and enhancing the front and back-end delivery systems on which we host these products and others
  - c. Developing training materials
  - d. General business activities not directly related to the maintenance and delivery of the products

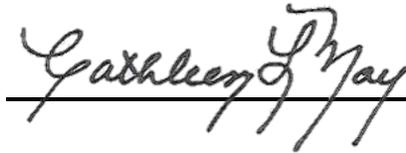
ANSWER:

- What types of work are considered to constitute subcontracting work under the contract?
  - Please see the answer in 2.
- Does this refer only to the work of providing authentication...
  - A lot of this depends on the business model for the company. If the company subcontracts for certain services, then there very may well be an opportunity for a HUB to complete the service.

**Texas State Library and Archives Commission**  
**Request for Offer #: 306-14-8016**  
**Question & Answers**  
**Addenda #2**

- In general, it is unlikely the authentication process, updating of content, or maintenance of the delivery systems would have subcontracting opportunities.
- HUBSubcontracting opportunities may be available for the development of materials, printing of materials or other activities. Again, it is dependent on the business model of the company.

Per Section 3.4 of Package 2, please sign this page and include with submitted Offer.



April 5, 2013

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DATE

**Texas State Library and Archives Commission**  
**Request for Offer #: 306-14-8016**  
**Question & Answers**  
**Addenda #3**

1. Where in our final response should we include a comprehensive description of the product(s) we are offering, if anywhere?

ANSWER: Within in Content, Tab 3.

2. Should we submit addendum acknowledgement to you now, with our final response, or both?

ANSWER: With the final response, tab 19.

Per Section 3.4 of Package 2, please sign this page and include with submitted Offer.



April 5, 2013

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DATE



## Terms and Conditions

1. License Grant. Subject to the terms of this Agreement, ProQuest LLC and its affiliates (“ProQuest”) hereby grant to the Texas State Library and Archive Commission (“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 contract (the “Service”) solely at Customer’s and authorized users’ 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 or other materials. All such rights and interests remain in ProQuest and its licensors.
2. Authorized Users. “Authorized User” means only: (1) For public libraries: library staff, individual residents of Authorized Users’ reasonably defined geographic area served, and walk-in patrons while they are on-site; (2) 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 (3) For other types of organizations: employees and independent contractors, while performing their work. Authorized Users excludes Authorized Users’ corporate affiliates, academic bookstores, and alumni unless those users are expressly included and reflected on the Order Form or Additional Sites Schedule. (4) For libraries of clinical medicine as defined in chap. 13 TAC 8.1: current employees of the institution which is served by the library, registered users of the library and authorized on-site patrons of the libraries; (5) For Texas State government libraries: library staff, agency employees, independent contractors and other temporary workers while performing duties within the scope of their employment or assignment and walk-in patrons while on-site; (6) All registrants in the Talking Book Program
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 passwords, IP addresses or other secure method of user verification. Customer will immediately notify ProQuest if Customer believes its security has been compromised. Posting of usernames or 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 additions, deletions, or 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 (i) ProQuest’s right to distribute such materials lapses, (ii) such materials contain errors or could be subject to an infringement or other adverse claim by a third party, or (iii) particular content

## Attachment C

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.
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 and authorized users' 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, (i) ProQuest shall disable access to any terminated Service, (ii) 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 (iii) ProQuest reserves the right to pursue all available legal remedies.
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 and authorized users' 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 any 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

**Attachment C**

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

## Attachment C

EVENT SHALL PROQUEST OR ITS LICENSORS BE LIABLE TO CUSTOMER OR ITS AUTHORIZED USERS FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES; OR (ii) 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 (iii) 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. ProQuest acknowledges that the Contract shall be governed by and construed in accordance with the laws of the State of Texas.

## Exhibit A: Permitted Uses

1. Online Research Services. Services designed to facilitate online research may be used for Customer's and its Authorized Users' 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. 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 and its Authorized Users does not circumvent any features or functionality of the Service, Customer and its Authorized Users 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 Authorized User is an academic institution, school, or public library:
    - i. Interlibrary Loan (ILL). The Customer and its Authorized Users 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 and its Authorized Users 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 and its Authorized Users must comply with applicable laws and regulations regarding interlibrary loan.
    - 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. If the Service includes MARC records, they may be placed in Customer's and its Authorized Users online public access catalog (OPAC) and shared online catalog as appropriate (e.g., WorldCat) unless otherwise specified on the contract with respect to a particular Service.
3. Electronic Resource Discovery, Access, and Management. Where the Service is an electronic resource discovery (e.g., Summon), access and/or management service (e.g., the 360 services), and 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: (i) 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, (ii) create, download, store and retain any reports and lists delivered by the Service, and (iii) share data about Customer's or authorized users' own library holdings that is retrieved from such Service with third party applications.
5. Library Catalog Enrichment Service. Where the Service is a library catalog enrichment Service (e.g., Syndetics), Customer and its Authorized Users may use the enrichment elements for the

## Attachment C

sole purpose of augmenting Customer's and its Authorized Users own library OPAC or website. Customer and its Authorized Users 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.
- 7.
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.
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 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.

**Attachment D**  
**Texas State Library and Archives Commission**  
**Terms and Conditions**

All of the following terms and conditions are hereby made part of this bid and any contract with the Texas State Library and Archives Commission (TSLAC) by reference. Submitting a bid or signing a contract with a false statement is a material breach of contract and shall void the submitted bid 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 States 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.

1. **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.
2. **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.
3. **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. Vendor agrees that in the event of such termination, the TSLAC will not be considered to be in default or breach under the Contract, nor shall it be liable for any further payments ordinarily due under the Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.
4. **Public Information Act.** Information, documentation, and other material in connection with this bid or contract may be subject to public disclosure pursuant to Chapter 552.021 of the Texas Government Code (the "Public Information Act"). Any part of a submitted bid that is of a confidential or proprietary nature must be clearly and prominently marked on each page as such by the Vendor. **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.**
5. **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.
6. **Specifications.**
  - Unless otherwise specified, items shall be new and unused and of current production.
  - All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
  - The State will not be bound by any oral statement or representation contrary to the written specifications.
  - Manufacturer's standard warranty shall apply unless otherwise stated.
  - Catalogs, brand names or manufacturer's references are descriptive only, and indicate type and quality desired. Bids on brands of like nature and quality will be considered unless advertised under Chapter 2155.067 of the Texas Government Code. If bidding on other than references, bid should show manufacturer, brand, or trade name, and other description of product offered. If other than brand(s) specified is offered, illustrations and complete description of product offered are requested to be made part of the bid. Failure to take exception to specifications or reference data will require Vendor to furnish specified brand names, numbers, etc.
  - Samples, when requested, must be furnished free of expense to the State. If not destroyed in examination, they will be returned to the Vendor, on request, at Vendor's expense. Each sample should be marked with Vendor's name and address, and requisition number. Do not enclose in or attach bid to a sample.
7. **Delivery.**
  - Delivery shall be made during normal working hours (8am-5pm, CST), unless prior approval has been obtained from the TSLAC.
  - No substitutions permitted without written approval of the TSLAC's Purchasing Dept.
  - 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.
8. **Contract Fulfillment.** If federal or state laws or regulations or other federal or state requirements are amended and

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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.

9. **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 bid 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.
10. **Payment.** 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. Any payments later than 30 days from uncontested invoice will start to accrue interest.
11. **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 Chapter 2260, Texas Government Code, 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 Chapter 2260, subchapter B, of the Texas Government Code. 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 Chapter 2260, subchapter C, of the Texas Government Code. The contested case process provided in Chapter 2260, subchapter C, of the Texas Government Code 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.
12. **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 bid or contract.
13. **Compensation.** Pursuant to Chapter 2155.004 of the Texas Government Code, the Vendor has not received compensation for participation in the preparation of the specifications for this bid or contract.
14. **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.
15. **Ineligibility.** Under Chapter 2155.004 of the Texas Government Code, the vendor certifies that the individual or business entity named in this bid 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.
16. **Indemnification.** **THE VENDOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES, AND TSLAC, ITS OFFICERS, AND EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT. VENDOR SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY TSLAC.**

**THIS PARAGRAPH IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE VENDOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR TSLAC FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF TSLAC OR ITS EMPLOYEES.**

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17. **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.
18. **Executive Head of a State Agency.** Pursuant to §669.003, Government Code, 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 Proposal, the Respondent certifies that it does not employ any person who was the Executive Head of a state agency in the past four years. Vendor certifies that they are in compliance with Texas Government Code, Title 6, Subtitle B, Section 669.003 of the Government Code, relating to contracting with executive heard of a state agency. If Section 669.03 applies, Vendor will complete the following information in order for the bid to be evaluated: Name of Former Executive; Name of State Agency; Date of Separation from State Agency; Position with Vendor; and Date of Employment with Vendor.
19. **State Auditor's Clause.** Vendor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditors 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 Auditors 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.
20. **Patents and Copyrights.** The Vendor agrees to protect the State of Texas from claims involving infringement of patents or copyrights.
21. **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).
22. **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 provide written notice providing reasonable particulars of the details of the alleged default to the Vendor, and the Vendor shall have 30 days from its receipt of such notice to cure the default, failing which TSLAC may then 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.
23. **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.
24. **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.
25. **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.
26. **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.
27. **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.

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- 28. 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.
- 29. Property Rights.** Notwithstanding anything to the contract in Sections 29 and Section 41, Vendor retains all ownership, title, and intellectual property rights in Vendor's content, materials and services provided under this contract, all of which were in existence prior to the commencement of this contract and none of which were developed specifically for TSLAC.
- 30. 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.
- 31. 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.
- 32. Immigration.** Vendor represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under this Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.
- 33. 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.
- 34. 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.
- 35. 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.
- 36. Ethics.** Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in Chapter 2155.003 of the Texas Government Code. 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 bid 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.

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- 37. Convictions in connection with Hurricane Katrina, Hurricane Rita, and subsequent disasters.** Per Senate Bill 608, 80th Legislative Session, TSLAC will not accept bids, 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.
- 38. 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 bid awards.
- 39. 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.
- 40. 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 bid 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.
- 41. Convenience of the State of Texas.** The TSLAC reserves the right to terminate the Contract at any time, in whole or in part, without penalty, by providing 30 calendar days' advance written notice, if the TSLAC determines that such termination is in the best interested of the state. In the event of such termination, the Vendor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TSLAC shall be liable for payments for any goods or services ordered from the Vendor before the termination date.

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.

- 42. 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.
- 43. 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.
- 44. 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 until December 31, 2021.**
- 45. Insurance & Other Security.** 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: Standard Workers Compensation Insurance covering all personnel who will provide services under the Contract; 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. 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 (3) 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.
- 46. 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

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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.

- 47. Vendor Performance.** The TSLAC may monitor the performance of the Contract issued under this Bid. All services and goods under the Contract shall be performed at an acceptable quality level 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.

State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the commission or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exemption from CPA/TPASS procurement rules and procedures.

Past Performance: A Vendor's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Vendors may fail this selection criterion for any of the following conditions:

- 1) A score of less than 90% in the Vendor Performance System,
- 2) Currently under a Corrective Action Plan through the CPA,
- 3) Having repeated negative Vendor Performance Reports for the same reason,
- 4) Having purchase orders that have been cancelled in the previous 12 months for non-performances (i.e. late delivery, etc.).

Vendor performance information is located on the CPA website at:

[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/)

- 48. Change Management.** Vendor shall assign only qualified personnel to this Contract. Vendor, in its 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 and obtain written approval 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.

- 49. 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.

- 50. 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.

- 51. Change in Federal or State Requirements.** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either the TSLAC or the Vendor cannot reasonably fulfill the 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 the Contract.

- 52. 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 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 PO resulting from this Bid. 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 Bid, Vendor expressly

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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 Bid.

- 53. Independent Vendor.** Vendor or Vendor's employees, representatives, agents, and any subcontractors shall serve as an independent contracting in providing services under any PO. 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.
- 54. Convenience of the State of Texas.** The TSLAC reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if the TSLAC determines that such termination is in the best interest of the state. In the event of such a termination, the Vendor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TSLAC shall be liable for payments for any goods and services ordered from the Respondent before the termination date.
- 55. 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.
- 56. 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.*).
- 57. 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/>.

**Attachment E**  
**LSTA Terms and Conditions**

**I. GENERAL TERMS AND CONDITIONS**

- A. The Contractor will comply with the following parts of the Governor's Office of Budget and Planning, UGMS revised June 2004, located at:  
[www.governor.state.tx.us/files/state-grants/UGMS062004.doc](http://www.governor.state.tx.us/files/state-grants/UGMS062004.doc).  
Part I. Cost Principles for State and Local Governments and Indian Tribal Governments (formerly from OMB Circular A-87), Cost Principles for Non-Profit Organizations (formerly OMB Circular A-122), Cost Principles for Educational Institutions (formerly OMB Circular A-21), or Federal Acquisition Regulation (FAR) 31.2, as applicable.  
Part II. State Uniform Administrative Requirements for Grants and Cooperative Agreements (Adapted from OMB Circulars A-102 and A-122)  
Part III. State of Texas Single Audit Circular (Adapted from OMB Circular A-133)
- B. For grants funded with Federal funds, Contractor will also comply with the Office of Management and Budget (OMB) Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (revised 6/97), located at:  
[www.whitehouse.gov/omb/grants/grants\\_circulars.html](http://www.whitehouse.gov/omb/grants/grants_circulars.html).
- C. The Contractor will comply with the IMLS' 45 Code of Federal Regulations, Part 1183, Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (adapted from OMB Circular A-102).
- D. Contractor 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. Contractor 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. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by Sub-Contractors through Contractor, and the requirement to cooperate, is included in any sub-grant awarded.
- E. The Contractor agrees to maintain all financial and programmatic records, supporting documents, statistical records, and other records relating to this grant award for three years 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.
- F. The Contractor 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 faxed asset inventory; and or, (3) any other issues identified in Contractor's internal audit report or grant activities. Drafts of this procedural documentation will be submitted to Contractor by dates established mutually between Grantor and Grantee. Grantor will provide review and guidance to enable final versions to be approved on or before established deadlines.

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**II. ENFORCEMENT**

- A. Remedies for noncompliance. If a Contractor or Sub-Contractor materially fails to comply with any term of the contract, whether stated in a state 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 Contractor or Sub-Contractor, 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 Contractor's or Sub-Contractor'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 Contractor or Sub-Contractor an opportunity for such hearing, appeal, or other administrative proceeding to which the Contractor or Sub-Contractor is entitled under any statute or regulation applicable to the action involved.
- C. Effects of suspension and termination. Costs of Contractor or Sub-Contractor resulting from obligations incurred by the Contractor or Sub-Contractor 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 Contractor or Sub-Contractor 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 Contractor or Sub-Contractor 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 Contractor or Sub-Contractor from being subject to "Debarment and Suspension" under Executive Order 12549 (see UGMS Part III, Subpart C, Sec 35) and state law.